

(2002) 07 P&H CK 0018

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2243 of 2000

Satya Wati and Others

APPELLANT

Vs

Mahadev Ramaji Pati

RESPONDENT

Date of Decision: July 26, 2002

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13(3)

Citation: (2002) 3 CivCC 594 : (2003) 1 CivCC 476 : (2003) 133 PLR 124

Hon'ble Judges: V.M. Jain, J

Bench: Single Bench

Advocate: Arun Jain, for the Appellant; Mahadev Ramaji Patil, for the Respondent

Final Decision: Dismissed

Judgement

V.M. Jain, J.

This revision petition has been filed by landlords-petitioners against the judgments passed by the courts below whereby the ejectment petition filed by them had been dismissed by the learned Rent Controller and the appeal filed by them was dismissed by the appellate authority.

2. Facts, which are relevant for the decision of the present revision petition, are that the landlords filed ejectment petition dated 11.2.1994 u/s 13 of the East Punjab Rent Restriction Act, 1940, as applicable to U.T.Chandigarh, seeking ejectment of the respondent-tenant Mahadev Ramaji Patil from one room on the first floor besides common bath room and latrine. It was alleged that the petitioners were owners/landlords of the demised premises whereas the respondent was in possession of one room besides common bath room and latrine on the first floor as a tenant on a monthly rent of Rs. 250/-. It was alleged that petitioners purchased the said house vide registered sale deed dated 22.9.1993 for their own use and occupation to live comfortably in the said house and since then they became owners and landlords. It was alleged that petitioner No. 1 had family comprising of herself

and her widowed daughter and her child whereas petitioner No. 2 had family comprising of herself, her husband and their four children and that the petitioners were in the need of two kitchens, two drawing rooms, two dining rooms and four bedrooms. It was alleged that presently there were only seven rooms in the entire house, whereas the need of the petitioners, jointly and severally, was 8 rooms besides two kitchens two bath rooms and latrines. It was further alleged that husband of petitioner No. 2 retired in December 1993. It was alleged that the tenanted premises comprising one room was required by the petitioners for their own use and occupation. It was alleged that petitioner No. 2 had three daughters, the eldest one being 12 years of age and she required premises for her family so that children may get sufficient space to study and sleep. It was alleged that the applicant No. 1 was in occupation of the entire ground floor whereas applicant No. 2 was in occupation of first floor except one room, which was on rent with respondent. Besides that, applicant No. 2 was also having one room on the second floor. It was alleged that the accommodation available with applicant No. 2 was not sufficient to meet her requirement and as such tenanted premises were required by the applicants for their own use and occupation. It was alleged that respondent was in arrears of rent and respondent and his family members were also creating nuisance.

3. The ejectment petition was contested by the respondent tenant, alleging therein that the petitioners had filed the preset petition with mala fide intention and that they had no bona fide requirement. It was alleged that respondent was a tenant since 1978 on first floor with latrine, bath room and verandah in common and that present rate of rent was Rs. 200/- per month. It was alleged that house in question consists of 8 rooms besides one store in the shape of big room, kitchen, latrine, bath room. It was alleged that respondent was in possession of only one room. It was alleged that family of petitioner No. 2 consists of 6 persons including 4 minor children besides herself and her husband and that the accommodation on the ground floor consists of three rooms and one store in the shape of one room and were sufficient of her requirement. It was alleged that by constructing one more room on the barsati, the petitioners had completed their requirement of 8 rooms and there was no bona fide need. Other allegations contained in the petition were denied and it was prayed that the petition be dismissed.

4. Petitioners filed replication, controverting the allegations contained in the written statement and reiterated the stand taken in the petition.

5. Learned Rent Controller, after hearing both sides and after perusing the record, dismissed the ejectment petition holding that the petitioners had failed to prove their need for the demised premises. It was also held that the tenant was also not liable to be ejected on the ground of non-payment or nuisance. Appeal filed by the landlords was also dismissed by the learned appellate authority, holding that the landlords had failed to prove their bona fide personal necessity. Aggrieved against

the judgments of the courts below, landlords filed the present revision petition in this Court.

6. Vide order dated 2.8.2000 notice of motion was ordered to be issued to respondent. On 24.9.2001, respondent who was present in person at the time of hearing admitted before the court that he had taken possession of the official accommodation but stated that the said official accommodation was not sufficient for his family. Revision petition was admitted and was ordered to be heard for regular hearing within three months, vide order dated 24.9.2001.

7. At the time of arguments, respondent was present in person and he submitted before me that his counsel had not come present and that he would argue the revision petition personally.

8. I have heard the learned counsel for the petitioners and respondent in person and have gone through the record carefully.

9. Learned counsel for the landlords petitioners submitted before me that the Courts below had failed to take into consideration the factual position based on evidence. It was submitted that it was a six marla house which was purchased by the petitioners with one half share each. It was submitted that the respondent was in possession as a tenant of one room on the first floor besides sharing bath room etc. with the petitioners. It was submitted that the petitioner No. 1 alongside her widowed daughter and her child were residing on the ground floor whereas petitioner No. 2 alongside her husband and four minor children was residing on first floor and the barasati on the second floor. It was submitted that the existing accommodation in the house in question was insufficient for the requirements of the petitioners and that they had bona fide requirement for the ejectment of the respondent from the demised premises, which consisted of one room on the first floor. It was submitted that the tenant have five members of the family who all were previously residing in that room and during the pendency of the present litigation, respondent tenant has been given official accommodation by the bank in which he is working and that he had shifted his family to the official accommodation but still the respondent was occupying one room on first floor of the house of the petitioner. On the other hand, respondent-tenant submitted before me that the official accommodation given to him by the bank was not sufficient, even though it consisted of three rooms. It was submitted that he was tenant in demised premises since 1978 and no case for ordering his ejectment from the same was made out.

10. The two petitioners namely Smt. Satyawati and Kusum Lata appeared in the witness box as PW5 and PW7 respectively. They also examined Vijay Kumar (husband of petitioner No. 2 Kusum Lata) as a PW9. PW9, Vijay Kumar stated that vide registered sale deed dated 22.9.1993, copy Annexure P5/1, his mother and his wife namely Satyawati and Kusum Lata respectively had purchased the house in question. It was submitted that as per verbal family settlement, the ground floor of

the said house was occupied by his mother and his sister (both widows) whereas first floor of the said houses besides barsati on the second floor was occupied by him and his wife besides their children. He stated that he and his wife alongwith children were in possession of only two rooms besides one kitchen, common bath room/latrine on the first floor and barsati on second floor. He stated that their family required the room in question for their personal necessity. He stated that his three daughters were studying in Class 8th, 5th and 2nd in Carmal Convent School, while his son was studying in a preparatory school (this statement was recorded on 1.5.1995). he stated that he had sought voluntary retirement in December 1993 as Inspector in Customs and Central Excise Department and that they do not have any other house to live in Chandigarh. During cross examination, he stated that his mother was residing in ground floor and that his widowed sister is also residing with her, He denied the suggestion that his mother and widowed sister were not residing in the ground floor. He stated that when the house was purchased it consisted of seven rooms and that a store was constructed after purchase, for using it as a store. He denied the suggestion that one room on the ground floor and one room on the top floor were constructed. He denied the suggestion that the entire house was in possession of his wife. He stated that he is special attorney of both the petitioners. Subsequently, Vijay Kumar was recalled for further examination by way of additional evidence as he wanted to produce the power of Attorney executed by the petitioners in his favour. Accordingly, Power of Attorney was produced by him and he produced the copy thereof as Ex.P1/9. During cross examination, he stated that his family was not a joint family and stated that on the ground floor, petitioner No. 1 Satya Wati was residing. He denied the suggestion that their family was a joint family and living together. He stated that his mother was having landed property in the village and that he has two brothers out of whom one was residing in the village while the other was employed at Naya Nagal. He denied the suggestion that his mother was permanently residing in the village or that she was not residing at Chandigarh.

11. PW5, Smt. Satya Wati, petitioner, also stated that she and her daughter. Neelam were residing in the ground floor whereas her son and daughter-in-law were residing on the first floor and that the premises in possession of petitioner No. 2 was not sufficient and they required demised premises for their personal use and occupation. During cross examination, she stated that she was residing on the ground floor and she had started living there after the purchase of the house. She denied the suggestion that she did not require this house as she was living at Shimla. She stated that her daughter Neelam was . a widow and denied the suggestion that she was residing with her in-laws. PW7 Kusum Lata, petitioner, deposed that after the purchase of the house by her and her mother-in-law to the extent of 50% each, an oral family settlement had taken place, according to the which, her mother-in-law Smt. Satya Wati was residing on the ground floor with her widowed daughter and that she alongwith her husband and four children were

residing on the first floor and barsati. She stated that they were not residing in the ground floor. She stated that she required entire first floor and barsati for their personal use and occupation. She stated the first floor considered of one drawing room, one bed room besides the room in possession of the tenant, there was one room on the barsati and that the said accommodation was not sufficient for their need. During cross examination, she stated that there were seven rooms in the entire house and that one room had been constructed on barsati and one store had been constructed on the ground floor and now there were total nine rooms in the entire house. She denied the suggestion that she was living on the ground floor or that the first floor and barsati were lying vacant. She stated that her mother-in-law was residing in the ground floor. She denied the suggestion that she did not require the demised premises for her own use and occupation or that her mother-in-law was not residing in the ground floor.

12. From the evidence led by the petitioners, in my opinion, it has been established on the record that petitioners namely Smt. Satya Wad and Kusum Lata purchased the house in question, a six marla house, having one half share each. If there are two owners and one of them decides to live on the ground floor while the other lives on first floor and barsati, in my opinion, no objection of any kind can be raised to the same. It has come in the evidence that petitioner No. 1 Smt. Satya Wati is residing in the ground floor alongwith her widowed daughter, whereas petitioner No. 2 Smt. Kusum Lata is residing on the first floor and barsati on second floor alongwith her husband and four children. It is not disputed before me that there were in all three rooms on the ground floor, three rooms on first floor and one room on the barsati on the second floor. Out of three rooms on the first floor, one of the rooms is in occupation of the respondent as tenant. Even if one store has been constructed on the ground floor and one room has been constructed on the barsati on the second floor, still it cannot be said that the accommodation with the petitioners is sufficient or that they do not require the room in question bona fide for their personal necessity. As referred to above, petitioner No. 2 Smt. Kusum Lata and her husband Vijay Kumar have four children including three daughters who have in the meanwhile grown up. On 1.5.1995, when Vijay Kumar appeared in the witness box as PW/9, he had categorically stated that his three daughters were studying in class 8th, 5th and 2nd in Carmel Convent School. Seven years have since elapsed when Vijay Kumar made the said statement in the Court. This would mean that their daughter who was studying in 8th class at that time would be a collage going student by now and the daughter who was studying in 5th class now should be studying in 12th class whereas the daughter who was studying in 2nd class at that time, will be studying in 9th class, whereas the son who was studying in preparatory school now should be studying in 6th or 7th class. Once the age of children is taken into consideration, in my opinion, it cannot be said that the petitioners do not require the demised premises for their personal use. The subsequent event about the growing age of children is definitely to be taken into account while deciding the

present revision petition. Learned appellate court failed to take a realistic view of the matter when he dismissed the appeal of the landlords. In para 24 of the judgment it was observed by the learned appellate authority that it was not the case of the appellants that the growing minor children would need rooms separately for their studies and bedding and moreover the rooms in possession of the appellants were sufficient for their living and element of need has not been proved. In my opinion, these observations made by the learned appellate authority, are not based on the evidence available on record. As referred to above, considering the present ages of children, total accommodation with the petitioners, in the house in question, could not be said to be sufficient nor could it be said that they do not require the room in question bona fide for their personal necessity. As referred to above, Smt. Satya Wati, petitioner has a right of residence in a portion of her choice in the house in question. Considering that both the petitioners had purchased the said house one half share each, it is quite reasonable for the petitioners to have verbally agreed to live in the manner that petitioner No. 1 would be living on the ground floor while petitioner No. 2 with her family would be living on the first floor and barsati on the second floor. Construction of a room on the second floor, in my opinion, would also not be sufficient to hold that the petitioners do not require the room bona fide for their personal necessity considering the requirement of the petitioners.

13. The evidence led by the respondent-tenant in the form of his own statement as RW1 and statements of RW2 Lachman Singh, in my opinion, would not be sufficient to hold that the petitioners do not require the room in question bona fide for their personal necessity.

14. In Sarla Ahuja Vs. United India Insurance Company Limited, it was held by the Hon'ble Supreme Court that crux of the ground for ejectment must be bona fide. It was further held that when a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a *prima facie* case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It was further held that while deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

15. In the present case, even if petitioner No. 1 Satya Wati was sometimes residing at Shimla to look after her farms and thereafter she is residing at Chandigarh in her own house, it cannot be said that she does not require her house on ground floor for personal necessity.

16. In *Balambal v. Maj. Gen. L.K. Moorthy* 2001(1) R.C.R. 699, it was held by the Madras High Court that even assuming for the sake of discussion that landlord would not require the premises throughout the year and would require only for intermittent period now and then even so the bona fides of their requirement do

not become extinguished.

17. In the present case, as referred to above, Smt. Satya Wati being owner of half share was residing on the ground floor with her widowed daughter and tenant could not be permitted to say that petitioner No. 2 Smt. Kusum Lata should also occupy some of the rooms on ground floor, even though, she has only one half share in the property. The fact remains that Smt. Satya Wati has two other sons, one residing at Shimla and other residing at Naya Nangal. As referred to above, there are only three rooms on the ground floor besides one store. One room would be required by her for herself, one room for her widowed daughter and one room would be utilised as drawing room and also for the guests as and when they arrive. There would be accommodation available on the ground floor for petitioner No. 2, whereas accommodation already with petitioner No. 2 on the first floor and ground floor is insufficient.

18. In view of my detailed discussion above, in my opinion, it is a fit case where this court should interfere in the present revision petition, especially when the Rent Controller and the appellate authority had committed illegality and irregularity while dismissing the ejectment petition of the petitioners and had failed to take a realistic view.

19. In view of the above, present revision petition is allowed, orders passed by the courts below are set aside and the ejectment petition filed by the petitioners is allowed and respondent-tenant is ordered to be ejected from the premises in question. However, respondent is given two months time to vacate the said premises, subject to his depositing the entire arrears of rent due upto dated with the Rent Controller within ten days from today.