

**(2004) 10 P&H CK 0020**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 3562 of 1991

Kali Charan and Others

APPELLANT

Vs

Raghubir Singh (D) by LRs.

RESPONDENT

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**Date of Decision:** Oct. 26, 2004

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115
- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13(3), 15(6)

**Citation:** (2005) 141 PLR 381

**Hon'ble Judges:** M.M. Kumar, J

**Bench:** Single Bench

**Advocate:** H.S. Giani and Hemant Sarin, for the Appellant; Mani Ram Verma, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

M.M. Kumar, J.

This is landlord's petition filed u/s 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for brevity, the Act) challenging the concurrent findings recorded by both the Courts below to the effect that the landlord-petitioner is not entitled to eject its tenant-respondent from the demised house on the ground that the latter has already acquired a house for himself, as envisaged by Section 13(3)(a)(iv) of the Act. The house which is alleged to have been acquired by the tenant-respondent has in fact been found to be owned by his son Surinder Singh, power of attorney. Ram Kumar filed Rent Petition No. 12 of 1985 on 12.2.1985 setting up the ground of non-payment of rent and that the tenant-respondent has acquired a residential house bearing No. Y-1617 after the commencement of tenancy, within the municipal limits of the urban area of Bhiwani. It was further alleged that the aforementioned house is sufficient for his requirement. It is pertinent to mention that the landlord-petitioners are trustees of Seth Kiori Mal Charitable Trust, Raigarh.

2. The issue concerning non-payment of rent did not remain alive as the arrears of rent were tendered alongwith costs and interest in accordance with the claim made by the landlord-petitioners. However, the only question which remained alive before the Rent Controller and Appellate Authority was whether the tenant-respondent had acquired residential house within the urban area of Bhiwani which may be sufficient for his requirement within the meaning of Section 13(3)(a)(iv) of the Act. The tenant-respondent had controverted the allegations concerning acquisition or construction of a new house. The house bearing No. Y-1617 has in fact been owned by his son Surender Singh who is living abroad. He further alleged that the landlord-petitioners had manipulated the municipal record to show that the tenant-respondent is the owner of the aforementioned house. The record is said to have been corrected later on at the instance of the tenant-respondent. The Rent Controller on the basis of his analysis of the oral as well as documentary evidence recorded the conclusion in para 12 of his judgment that Surender Singh son of the tenant-respondent is the absolute owner of House No. Y-1617 and the tenant-respondent has no right, title or interest of any nature in that house. The Rent Controller also rejected the argument that the tenant-respondent constitute a joint Hindu Family with his son Surender Singh.

3. On appeal, the learned Appellate Authority upheld the findings of fact that House No. Y-1617 consisted of 10 rooms and is a palatial Bungalow. At one stage, Raghubir Singh, tenant-respondent was shown to be its owner in the municipal record (1979-1980). However, later on corrections were effected and in the year 1985, name of Surender Singh was added who is resident and citizen of U.S.A. for the last over two decades. The Appellate Authority further mentioned that the plot on which the house has been built was gifted to Surender Singh by his mother's sister, namely, Smt. Bimla. Later on, Surender Singh son of the tenant-respondent has raised construction on the plot by raising a loan of Rs. 20,000/-. The argument that tenant-respondent constitutes a Joint Hindu Family with his son has been rejected by the learned Appellate Authority in the following words:-

"First I take up the case of facts. Surender the son of the tenant while examining himself as RW-2 has stated that he does not constitute a Joint Hindu Family with his father. As against this evidence of the respondent, Ram Kumar, PW-2, the petitioner have failed to lead any evidence. Otherwise too, when admittedly Surender is living in America for the last over 20 years the petitioners possibly could not lead any evidence to establish the fact that the father and the son constituted a Joint Hindu Family. The fact that Surender is living in America for the last over 20 years in itself would give rise to a strong presumption of his living separately from his father rather than to give rise to an inference that the father and the son are living jointly. So I find that the father and the son do not form a Joint Hindu Family in this case."

4. Mr. H.S. Giani, learned counsel for the landlord-petitioners has argued that the entry in the assessment register of municipal record for the year 1979-1980, Ex.A-1

would show that the tenant-respondent is the owner of House No.Y 1617. The learned counsel has also argued that the entries have been changed later on 12-4-1985 after the filing of the instant petition on 12.2.1985 as is evident from Ex.R-1 which reflects corrections made in pursuance to Order dated 20-4-1985. The learned counsel has also pointed out that for all intents and purposes, the house belongs to tenant-respondents, Raghbir Singh as he has been visiting his son in United States and receiving benefits from the U.S. Government in lieu of the social security. He has made reference to the statement of tenant-respondent Raghbir Singh, RW-1, where he has admitted that he has been working as attorney of his son and collecting rent on his behalf. He has made reference to document Ex. R15 dated 2.11.1987 wherein he has been authorised to collect rent by his son Surender Singh with further stipulation to ensure the maintenance of his house on his behalf. He has also pointed that the rent so collected is not deposited in the account of his son. The learned counsel has further argued that, the loan of Rs. 20,000/- obtained by Surender Singh son of the tenant-respondent has been repaid by the tenant-respondent and in fact the house has also been built by the tenant-respondent because Surender Singh had gone to U.S.A. in 1968 and the house has been built somewhere in 1978. The learned counsel has maintained that the aforementioned facts sufficiently show that the transactions showing the name of Surender Singh is a camouflage and in fact the tenant-respondent is owner of the house, collecting rents and getting social security from U.S.A.

5. Mr. Mani Ram Verma, learned counsel for the tenant-respondent has argued that the plot on which the house has been built was in fact gifted by his mother's sister, namely, Smt. Bimla. In this regard, he has made a reference to the Gift Deed dated 29.6.1976, Ex. R-4 registered with the Sub-Registrar, Bhiwani. The learned counsel has then referred to the loan documents pertaining to year 1978, Ex. R-5 to Ex.R-12 to argue that the loan for building the house on the aforementioned plot (which was gifted by Smt. Bimla to Surender Singh), was obtained in 1978 and re-paid by 1981. He has then referred to Ex.R-13 dated 21.3.1984 showing that the tenant-respondent raised objection with regard to the house tax assessment for the year 1984-1985 by asserting that the house did not belong to him. The learned counsel on the basis of the aforementioned documentary and oral evidence has argued that by no stretch of imagination, the house could be considered as the one owned by the tenant-respondent.

6. The learned counsel has then submitted that both the Courts on proper appreciation of evidence have recorded findings of fact and while exercising revisional jurisdiction, this Court would not interfere unless it is found that the findings of fact are without any evidence or that a reasonable man on the basis of available evidence would not record the findings which have been recorded by the Courts-below.

7. After hearing the learned counsel for the parties and : Mr. Justice M.M. Kumar.

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the record, I am of the considered view that the instant petition is liable to be dismissed because House No. Y-1617 situated in the urban area of Bhiwani is not owned by the tenant-respondent. Both the Courts below on proper appreciation of evidence have rightly concluded that the tenant-respondent cannot be considered to be the owner of House No. Y-1617 situated in the urban area of Bhiwani. A perusal of Gift Deed, Ex.1, makes it abundantly clear that the plot was gifted to Surender Singh by his mother's sister somewhere in 1976 and the house was built after obtaining loan in 1978 as would be evident from the documents Ex. R-5 to Ex. R-12. The aforementioned documents further show that the loan has also been repaid by November, 1981. Apart from the aforementioned documentary evidence, there is further evidence in the form of power of attorney executed by Surender Singh in favour of his father, Raghbir Singh, Ex.R3 giving him all rights for raising construction on the plot and to obtain loan. The power of attorney further authorised the tenant-respondent to sign and execute various documents with regard to obtaining a loan and its repayment. It is also pertinent to mention that Ex.R 15 further entitles the tenant-respondent to collect rent and to ensure the maintenance of the house, electric power and water connection which is in the nature of power of attorney sent by his son Surender Singh from U.S.A. It is further clear from Ex.R-13 that when house tax assessment was recorded for the year 1984-85 in the name of the tenant-respondent, objections were raised by him and it was asserted that the house did not belong to him but to his son Surender Singh. He further asserted that he is only the holder of power of attorney of his son. The aforementioned documents along-with the oral evidence produced by the parties do not leave any manner of doubt that the Courts-below have correctly recorded the findings of fact that House No.Y-1617 does not belong to the tenant-respondent. He is neither the owner, or lessee nor is member of Hindu undivided family alongwith his son. It is well settled that this Court would examine the legality or propriety of any findings of fact u/s 15(6) of the Act while exercising revisional jurisdiction. However, it cannot reverse those findings merely because another Judge at the trial would have taken a different view and cannot act as an Appellate Court. The aforementioned view has been expressed by the Supreme Court in the cases of Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta 1999(2) R L R S.C. 211, Sarla Ahuja v. United India Insurance Company Limited 1998(1) R L R (S.C.) 550 and Vaneet Jain v. Jagjit Singh 2000(2) R L R 220 (S.C.). The observation made in the case of Vaneet Jain (supra), are fully applicable to the facts and circumstances of this case which read as under-

"4. Sub-section (6) of Section 15 of the Act empowers the High Court to exercise its revisional jurisdiction for the purpose of satisfying itself if an order passed by the Rent Controller or the appellate authority is in accordance with law. The question

that arises for consideration is whether the High Court in its revisional jurisdiction can re-assess or re-evaluate the evidence only to come to a different finding than what has been recorded by the Court below. This Court in the case of Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta held, that the High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were Court of facts. However, the High Court is obliged to test the order of the Rent controller on the touchstone of whether such an order is in accordance with law. For that limited purpose the High Court would be justified in reappraising the evidence. In Sarla Ahuja v. United Insurance Co. Ltd., it was held that the High Court while exercising the jurisdiction can reappraise the evidence only for a limited purpose for ascertaining as to whether the conclusion arrived at by the fact finding Court is wholly unreasonable.

5. A perusal of sub-section (6) of Section 15 of the Act shows that the power of the High Court to revise an order is not an appellate power, but it is also true that it is not akin to power exercisable u/s 115 of the Code of Civil Procedure. It is no doubt true that the High Court would be justified in interfering with the order passed by the appellate authority if the legality or propriety of such order demands such interference.

8. The argument of the learned counsel for the landlord-petitioners based on the entry in the assessment register of the municipal committee for the year 1979-1980 has failed to impress me because subsequently, the correction has been incorporated as is evident from Ex.R-1 which is House Tax assessment for the year 1984-1985 in respect of House No.Y-1617. In the aforementioned document, the name of Surender Singh son of tenant-respondent has been incorporated. Apart from that there is overwhelming documentary evidence on record showing that the plot was gifted to Surender Singh somewhere in 1976 vide Ex.R-4 by his mother's sister, Smt. Bimla and thereafter, construction was raised by him obtaining loan in the year 1978 as is evident from Ex.R-5 to Ex.R-12. These documents show that the loan was obtained in 1978 and the same was re-paid by November 1981. In the face of such an overwhelming evidence, one stray entry which has been subsequently corrected cannot constitute a basis for reversing the findings of fact recorded by both the Courts below. The other argument regarding the visit of tenant-respondent to his son in U.S.A. or acting as his attorney for the purposes of receipt of rent or obtaining loan of repayment of the loan would also not require any serious consideration because the fact remains that the tenant-respondent has acted on behalf of his son. All those acts would not make the tenant-respondent as owner of House No.Y-1617 situated at Bhiwani. The requirement of Section 13(3)(a)(iv) of the Act is that in the case of residential building, if a tenant acquires possession of or erects such a building reasonably sufficient for his requirement in the urban area concerned, then, such a tenant could be directed to vacate to tenanted premises and hand over its vacant possession to the landlords. In the present case, it has not been shown that the tenant-respondent has acquired possession of any such

building which may reasonably sufficient for his requirement in the urban area of Bhiwani. The house built by his son cannot be considered as the house of tenant-respondent. Therefore, the argument raised on behalf of the petitioners is liable to be rejected.

9. For the reasons recorded above, this petition fails and the same is dismissed. However, there shall be no order as to costs.