

(2005) 10 P&H CK 0039

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 5469 of 2005

Manju Devi

APPELLANT

Vs

Prem Parkash and
Others

RESPONDENT

Date of Decision: Oct. 24, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 2
- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13, 15(6)

Citation: (2006) 2 CivCC 81 : (2006) 142 PLR 564 : (2006) 2 RCR(Civil) 230

Hon'ble Judges: S.S. Saron, J

Bench: Single Bench

Advocate: Sachin Mittal, for the Appellant;

Final Decision: Dismissed

Judgement

S.S. Saron, J.

This revision petition has been filed u/s 15(6) of the Haryana Urban (Control of Rent and Eviction) Act 1973 (Act - for short) against the order dated 29.9.2005 passed by the learned Additional Civil Judge (Sr Divn) Gurgaon whereby the objections of the objector-petitioner against the execution of the decree for possession in respect of the demised premises have been summarily dismissed.

2. The landlord - Prem Parkash (respondent No. 1) filed a petition for ejectment of his tenant-late Shri Shiv Lal u/s 13 of the Act. During the pendency of the ejectment petition, the tenant Shiv Lal died and his LRs-Shri Chand, Darshan Lal, Naresh (respondents No. 2 to 4) and Smt Jagni Devin (since deceased) were impleaded as his LRs on 3.1.2000. The ejectment petition filed by the landlord (respondent No. 1) was dismissed by the learned Rent Controller. However, on appeal filed by the landlord, the same was allowed by the learned Appellate Authority vide judgment and order dated 1.12.2003. The tenants were directed to vacate the premises within a period of 60 days. They then filed a revision

petition in this Court which was also dismissed and they were directed to hand over the vacant possession of the premises to the landlord on or before 31.3.2005. The tenants then preferred Special Leave to Appeal before the Hon"ble Supreme Court which was also dismissed. However, they were granted four months" time from 15.4.2005 to vacate the premises and till then the order of eviction was not to be executed. This was subject to the condition that the tenants file a prescribed undertaking. The learned Additional Civil Judge (Sr Divn), Gurgaon, in her order, has observed that it had not come on the record that the tenants complied with the conditions mentioned in the order dated 15.4.2005 of the Hon"ble Supreme Court or that they had filed an undertaking regarding compliance of the condition. The period of four months within which the order of eviction was not to be executed has since expired and the order of ejectment has become executable.

3. The petitioner-Manju Devi has filed objections against the execution of the decree alleging that on 17.7.2005 a property dealer had disclosed that possession of the house would be taken within 4-5 days by the DH-Prem Parkash (respondent No. 1) regarding which execution was pending. The objector inspected the file and learnt about the decree for ejectment which, it is alleged, was passed behind her back. The LRs of de-ceased-Shiv Lal tenant did not disclose the name of the objector petitioner intentionally and knowingly and did not implead her as a party even though she was one of the LRs of Shiv Lal-tenant. The case set up by the objector-petitioner was/is that the entire proceedings were withheld from her in order to cause loss to her and she had a right to be heard being the LR of Shiv Lal. It is alleged that the petitioner is the widow of Chaman Lal @ Kamaljit who was the son of late Shiv Lal and after his death, she had inherited the tenancy rights in respect of the suit premises along with the other JDs. The husband of the objector-petitioner had died on 4.12.1989 and after his demise, her father-in-law Shiv Lal tenant and his three sons had been harassing her and her family members. Due to strained relations, the JDs did not disclose anything about the case and colluded with the DH.

4. Therefore, the DH was not entitled to take possession from the objector. The objections of the petitioner were contested by the DH-respondent. It was stated that the right to claim tenancy by inheritance was not a separate right and any one or all the LRs of the deceased could defend the case. Besides, by the presence of the sons and widow of the deceased, Shiv Lal, the estate and tenancy rights were duly represented. It is also stated that the LRs of the deceased-Shiv Lal had filed a revision against the order of the learned Appellate Authority in this Court which was dismissed. Thereafter, SLP was filed in the Hon"ble Supreme Court which was also dismissed. The ejectment order had attained finality and was not liable to be challenged.

5. The executing Court, after considering the objections of the petitioner dismissed the same. The plea of the objector that she was residing in the house in question of which execution was sought, was negatived. Cuttings regarding change of address were found on the documents submitted by the objector-petitioner. Besides, the latter"s voter list for the year 2004 produced by the DH showed that the name of the objector was not

mentioned. It was also observed that it was the duty of the LR's of the deceased to get themselves impleaded and it is not the duty of the DH landlord to implead all the LR's. It was also observed that if the objector had been residing in the disputed premises with the other LR's of Shiv Lal as had been claimed, there was no reason why she would not have got a wind of the eviction petition filed against Shiv Lal. Besides, the Court was also satisfied that had the objector been joined as a party in the eviction petition, a different result would not have been there. Consequently, the objections were dismissed by the impugned order which is assailed in this revision petition.

6. Learned Counsel for the petitioner contends that the petitioner is also one of the LR's of deceased-Shiv Lal and is in possession of the property being his LR. It is contended that the objector-petitioner has an independent right to contest the petition and she being not arrayed as a party to the ejectment petition of which execution is now being carried out, the ejectment order is not liable to be executed qua her. Therefore, it is contended that the learned executing Court erred in law and facts in passing the impugned order.

7. I have given my thoughtful consideration to the contentions of the learned Counsel for the petitioner. However, I find no merit in the same.

8. It is not disputed that the petitioner is one of the LR's of deceased-Shiv Lal. However, it is also not in dispute that the other LR's of the deceased-Shiv Lal i.e. respondents No. 2 to 4 and Smt Jagni Devi, wife of deceased-Shiv Lal were impleaded as the LR's of the deceased. Therefore, the interest of the objector-petitioner was substantially represented. Even otherwise. Rules 2-A and 2-B have been inserted after Rule 2 of Order 22 C.P.C. by the High Court amendment in Punjab, Haryana and Chandigarh and is applicable to Punjab, Haryana and Chandigarh. The said Rules 2-A and 2-B of Order 22 CPC read as under:

2-A. Every advocate appearing in a case who becomes aware of the death of a party to the litigation (whether he appeared for him or not) must give intimation about the death of that party to the Court and to the person who is dominus litis.

2-B. The duty to bring on record the LR's of the deceased defendant shall be of the heirs of the deceased and not of the person who is dominus litis.

A perusal of Rule 2-B of Order 22 C.P.C. evidently shows that the duty to bring on record the LR's of the deceased defendant is on the heirs of the deceased and not who is dominus litis. Therefore, on the death of Shiv Lal who was the respondent in the ejectment petition, it was the duty of his LR's to get themselves impleaded as his LR's and it was not the duty of the landlord-respondent No. 1 to implead the LR's. The landlord-respondent No. 1 was dominus litis in the ejectment petition that had been filed. Therefore, in case the objector-petitioner did not get herself impleaded as LR, she cannot now claim that the order of ejectment is not executable against her. Even otherwise, the learned Additional Civil Judge (Sr Divn), Gurgaon has observed that there was an attempt

on the part of the objector to prolong the already protracted litigation further. Besides, she was found to be not residing in the house in question and there were cuttings in the address of Shiv Nagar which had been changed to Basai Road, Sohna Chowk. There was also no date or year mentioned in the voter card. On appreciation of facts and material on record, the claim of the objector-petitioner did not appear to be bona fide. Nothing has been shown that the findings and conclusions reached at by the learned Additional Civil Judge (Sr Divn), Gurgaon are in any manner illegal. In the circumstances, no interference is called for in exercise of revisional jurisdiction of this Court.

9. For the fore going reasons, there is no merit in this writ petition and consequently the same is dismissed.