

(1985) 03 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 218 of 1978

M/s. Jai Kishan Parshotam Dass

APPELLANT

Vs

S.P. Singh sood and Others

RESPONDENT

Date of Decision: March 19, 1985

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: N.L. Dhingra, for the Appellant; H.L Sarin and Sh. Sukhdev Singh, for the Respondents Nos. 1 to 7, for the Respondent

Judgement

J.V. Gupta, J.

This is tenants revision petition against whom the eviction order has been passed by both the authorities below

2. The landlady Smt. Damyanti Sood (now deceased) filed the ejectment application dated 15th April, 1971, for ejectment of the tenants from the demised premises, inter alia on the grounds that they had neither paid nor tendered the arrears of rent with effect from 1st December, 1966, had made material alterations in the premises by removing the wall between the two shops; had changed the user thereof and had sublet the same to Durgesh Hosiery, Respondent No 4. It was also alleged therein that prior to 1st April, 1966, Respondent Nos. 1 to 3 (before the Rent Controller) were the tenants on one shop forming part of the property at a monthly rent of Rs 15/-. Thereafter, the landlady constructed two shops in the front according to the needs and requirements of the Respondents and were leased out to them at an additional rent of Rs. 100/- per month, thus, increasing the previous rent of Rs. 15/- to Rs. 115/- per month. The ejectment application was contested by the Respondents by filing two separate written statements; one by Respondent Nos 1, 2 and 4 and the other, by Respondent No. 3, i.e., Parshotam Dass, who admitted the allegations made by the landlady in the ejectment application. The contesting Respondents denied the allegations made in the ejectment application. It was pleaded by then that Ms. Jai Kishan Parshotam Dass was a joint Hindu firm and that

the landlady had constructed two shops in front of the old structure on vacant space on which a chhapar existed in lieu of the two rooms, measuring 10-1/2" x 10" and 14" x 8" the possession of which was given by them to her and as a result, the rent remained the same, i.e. Rs. 15/- per month. It was also averred that the said two rooms were given to her who happened to be the sister of Jai Kishan, Respondent. It was further pleaded that the rent at the rate of Rs. 15/- per month had been paid by them to her without getting any receipts thereto from her; they had not made any alteration in the property, in question; the question of the change of user of the shops did not arise as the same had been let out for non-residential purposes by the erst while Muslim owners thereof and that Jai Kishan Parshotam Dass was a joint Hindu family firm and Durgesh Hosiery was owned and possessed by the said joint Hindu family firm. It was also pleaded that Mohan Lal was the son of Jai Kishan and that Durgesh Hosiery was owned by M/s Jai Kishan and Mohan Lal. The learned Rent Controller found that the rate of rent was Rs 155/- per month with effect from 1st December, 1966, which the tenants had not paid or tendered on the first date of hearing. It was also found that a major portion of the premises, in dispute, had been sublet to Respondent No. 4, i.e. Durgesh Hosiery. Regarding the pleas of material alterations and materially impairing the value and utility of the building it was found that the tenants had effected material alterations and had thus impaired the value and utility thereof. It was also found that there was a change of user of the premises from kiriyana shop to a hosiery factory. Thus, the eviction order was passed against the tenants. In appeal, the learned Appellate Authority affirmed the findings of the Rent Controller on all the grounds of ejection and, thus, maintained the eviction order passed against the tenants. Dissatisfied with the same, they have come up in revision to this Court.

3. The gravamen of the learned Counsel for the Petitioners is that the two newly constructed shops had been given on rent by the landlady at the same old rate of rent of Rs. 15/- per month in lieu of the two rooms forming part of the old rented premises surrendered by the tenants to her. Thus, argued the learned Counsel, the rent for the demised premises remained the same, i.e. Rs. 15/- per month. The findings of the authorities below are wrong and illegal as they are based on the misreading of the evidence, and the material documents, on record, have not been properly appreciated. However, the learned Counsel for the Petitioners was unable to point out as to what piece of evidence on record had been misread by the authorities below. As a matter of fact, the effort appeared to be that by alleging the misreading of the evidence on record this Court be illuded to go through and to re-appreciate the same as in a regular trial of the case in revision.

4. After hearing the learned Counsel for the parties and going through the relevant evidence on the record, I do not find any merit in this revision petition.

5. After discussing the material evidence on the record, documentary as well as oral, a firm finding has been given by the Appellate Authority as follows:-

From all this one and only one irresistible conclusion possible is that the shops were let out by the landlady to the tenants on a monthly rent of Rs. 115/- (Rs. 100/- for the new shops and Rs. 15/- for the old shop), with effect from 1-4-1966. Since the tenants tendered rent only at the rate of Rs. 15/- per month w. e. f. 1.2.1966 instead of Rs. 115/- per month, the tender made by the tenants was insufficient and incomplete and as such it is a clearly established case on facts where the default in payment of rent is proved beyond any shadow of doubt whatsoever.

In this way, the version set up by the tenants that the rent remained the same, i.e., Rs. 15/- and not Rs. 115/- per month, because they had surrendered two rooms to the landlady was not accepted by both the authorities below. Except the contention, that there was misreading of the evidence on the record, no other contention was raised on behalf of the Petitioners. From a perusal of the judgments of the authorities below, I find that the entire material evidence on the record has been considered and a firm finding has been given that after the construction of the two shops, the rent was increased from Rs. 15/- to Rs. 115/- per month with effect from 1st December, 1966. There is no illegality or impropriety in the said findings of the authorities below as to be interfered with in the revisional jurisdiction.

6. Consequently, this revision petition fails and is dismissed with costs. However, the tenants are allowed three month's time to vacate the premises; provided all the arrears of rent, and the advance rent for three months are deposited with the Rent Controller within a fortnight with a further undertaking, in writing, that after the expiry of the said period of three months, the premises will be vacated and the vacant possession thereof would be handed over to the landlords.