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(2012) 10 P&H CK 0133

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 5087 of 2001 (O and M)

Baljit Kumar Sharma	APPELLANT
Vs	
Ramesh Kumar Aggarwal and Another	RESPONDENT

Date of Decision: Oct. 5, 2012

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Vishal Garg, for Mr. Chetan Mittal, for the Appellant; B.R. Mahajan and Ms. Gagandeep Kaur, for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

The revision petition is filed at the instance of a tenant, who was ordered to be evicted by the appellate authority in reversal of the judgment passed by the Rent Controller. The landlord had several grounds to urge for eviction that included a prayer for personal requirement for his own occupation. It was a residential building and the landlord''s contention was that he had only one house from ancestral property and in that house, he got one room at the first floor which was most insufficient for the residence of the petitioner. The petitioner would contend that he had two sons of the age of 20 and 19 years and two daughters of the age of 17 and 6. The tenant entered a defence that the landlord had concealed the fact that he was not merely in possession of one room in the ancestral property but the property itself had been constructed during the course of proceedings to five floors. The Rent Controller found that the tenant had not established his need and dismissed the petition. The appellate authority adverted itself only to the ground of personal requirement of the landlord and reversed the decision of the Rent Controller. The appellate authority observed that the landlord had not been lacking in bona fides and he had actually allowed for the tenant to continue in spite of the landlord''s

purchase of property 6 years earlier and he had sought for eviction only when the last of his children grew to 6 years of age and when his own need was imminent. The tenant, who had been ordered to be evicted, is in revision before this Court, urging that the appellate authority had not properly considered the weight of evidence placed before the Rent Controller on the basis of which the Rent Controller dismissed the petition. He would contend that the averment in the petition itself was that the landlord was in possession of only one room, while the tenant had stated in his reply that he was in possession of not merely one room at the first floor in his ancestral property but the major portion of the first floor as also the second floor. The tenant had made a specific contention regarding the fact that the ingredients of the landlord''s requirement had not been properly pleaded or proved. The petition for reception of additional evidence has also been sought at the instance of the tenant to contend that the landlord had actually constructed three more floors and has filed a suit against the Municipal Committee for a restraint against any action for alleged violation of certain regulations for the additional construction. This document, according to the tenant, would prove that the landlord is in occupation of sufficiently large accommodation. The additional evidence is also brought to the effect that the sons'' requirements, as sought to be proved before the Rent Controller, was not genuine, since the sons themselves have suffered a punishment of imprisonment for life for alleged murder of step-mother. This contention however does not appear to be correct since the documents filed also reveal that in a further appeal to this Court, the conviction rendered by the Sessions Court was set aside and the sons were acquitted.

2. It is an admitted fact that the building in the occupation of the tenant is a residential portion. The eviction is sought on the ground of landlord''s requirements for housing himself with a growing size of his family with 4 children. The tenant''s contention refutes the landlord''s averment regarding his alleged possession of only one room in the ancestral property. The statutory mandate u/s 13 of the East Punjab Rent Restriction Act is contained as regards the landlord''s requirements in Section 10(3)(a) which reads as follows:-

10(3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-

(i) in the case of a residential building if

(a) he requires it for his own occupation;

(b) he is not occupying another residential building, in the urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

(d)....

3. The requirement is, therefore, that the landlord shall not be occupying another residential building. The interpretation to this Section has been that if he is in possession of any other building and if it is shown to be inadequate for the requirements by the size of the family, the landlord could still be stated to be not in possession of any other residential building. In this case, the averment in the petition is rested on his alleged possession of one room in the first floor. At the trial, the document of a partition decree was itself produced as evidence. It is seen from the records that a decree had been passed on 21.11.1981 among the landlord, his brothers and mother with reference to the property in Door No. 38 and half portion of Door No. 39 and in the partition, the property depicted through a plan in respect of both door numbers 38 and 39 showed that the landlord had been allotted the portion denoted in red colour in the first floor and the barsati portion in the second portion at the terrace. Evidently, the landlord had in his possession of documents that clearly delineated his area of entitlement.

4. I have seen the plan and it is just not one room at the first floor, but, on the other hand, 3 rooms and 2 stores and verandah portion. The learned counsel appearing on behalf of the landlord seeks to downplay the lack of proper pleading by contending that it is an upper portion of a shop at the ground floor and these small rooms had been made only for the sake of convenience. The landlord has been examined with reference to his averments in the petition and it would be essential to reproduce the same as well. It is elicited, "the property left by my grandfather bearing property No. 39, Mohalla 13, Jalandhar Cantt., inherited by my father was originally owned by Jawala Parshad.....It is correct that old building had been demolished and new building has been constructed in its place. The premises in our possession is a five storeyed building from road side as shown in photograph Ex. R1. My father had four sons namely Kesho Ram, Jugal Kishore, myself and Brij Mohan. Out of whom Jugal Kishore has since died. He has not left behind any family. It is wrong to say that the five storeyed building is owned by three brothers. It is owned by two brothers i.e. myself and Brij Mohan....."The landlord was, therefore, categorical in his assertion that although the decree referred to 3 floors only, even at the time of trial, it had become a five storeyed building and he was asserting ownership and possession to the property as belonging only to himself and yet another brother. Even the decree refers not merely to the first floor but also barsati portion marked in red on the second floor. This was again not referred to in the petition. The learned counsel appearing on behalf of the landlord would contend that it was merely a terrace portion and it could not be taken as convenient for enjoyment.

5. In a petition for eviction passed on the ground of personal requirement, several factors go into reckoning to find whether a tenant could be ordered to be evicted on facts disclosed. The bona fides of requirement is tested by the imminence of the landlord''s need. The need here expressed is that the landlord purchased the petition mentioned rooms for accommodating his own family better and it was nobody''s case that the landlord was trying to enhance the rent and was using an action for eviction as an oblique motive. Even in an enquiry into the bona fides, there shall be a proper foundation for

laying such a claim and to establish it. It is axiomatic that no evidence could be given without a foundation of pleadings. The pleadings in this case cannot just be deficient in any manner. If the law required that the landlord shall not be in occupation of any other residential building in the urban area to the extent to which, judicial pronouncement have allowed for diluting it by also allowing landlord to say that he did possess any other building, but was not sufficient, the Court must have the full details of what the landlord actually owned and possessed. A bald statement that he has in his possession of only one room in the first floor, in my view, is an attempt to deceive the Court into a perception that the landlord could not be expected to live in one room with his large family. If the first floor had been converted into small rooms for the sake of convenience, as canvassed by the learned counsel, it must have been so stated in the petition itself that there were small rooms which were insufficient for the living. Again, if there was a portion permanently in his enjoyment as barsati, the same must have been also pleaded in the petition. In this case, during the course of trial before the Rent Controller itself, he had owned 3 more floors additionally to the two floors, namely, floor Nos. 3, 4 and 5 which was not referred to in the partition decree. He had surely occasion to explain as to how the additional floors were put to use and how the additional building that had come about, were not sufficient for his occupation as landlord. He did not make any such attempt to even explain the inadequacy of his property in which he had claimed to have a half share along with his brother.

6. It appears that along with the action for eviction against the tenant who was occupying the ground floor, the landlord took action for eviction of yet another tenant at the first floor of the same building. The order of eviction had been issued with reference to the ground floor as well as the first floor. Just like the revision petitioner before this Court, there was yet another revision petition by the tenant at the first floor. That revision appears to have been dismissed. I do not think that it will have any impact or bearing, for, I rest the decision of inadequacy of the pleadings and evidence in Court and what the landlord failed to disclose as an expression of bona fides in requirement. It requires no great emphasis that as the size of the family grows large, the requirement for additional accommodation could be justified, but before he could eject the tenant on such a ground, he needs to play his cards open. I have held in this case that the landlord was not fair in his pleadings or evidence and the appellate authority failed to see through the game and upset the decision of the Rent Controller on inadequate grounds. The increase in the size in the family could not have been a justification for eviction in this case. It ought to have been matched with what the landlord owned and possessed. The appellate authority did not again advert to evidence adduced before the Rent Controller and what the landlord actually acquired in the course of proceedings. The order of eviction passed by the appellate authority suffers from legal vice of failing to consider what was relevant and, therefore, affords a scope for intervention in revision.

7. The order of the appellate authority directing eviction is set aside. No other grounds of eviction as sought by the landlord are urged before me for consideration and, therefore, I

do not broach on them. The revision petition is allowed on the above terms.