

(2006) 07 P&H CK 0208

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Narinder Singh

APPELLANT

Vs

Sarabjit Singh

RESPONDENT

Date of Decision: July 12, 2006

Acts Referred:

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

Citation: (2006) 4 CivCC 257 : (2007) 146 PLR 405 : (2006) 2 RCR(Rent) 226

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vinod K. Sharma, J.

Landlord Sarabjit Singh had filed a petition u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short the Act) against Narinder Singh, present petitioner for eviction from the shop in dispute on the ground that the petitioner herein was in arrears of rent from 1.1.1994 till the date of filing of the application. It was also pleaded that the shop in dispute had become unfit for human habitation.

2. In the written statement, the present petitioner denied the relationship of landlord and tenant between the parties and on the pleadings of the parties, the following issues were framed:

1. Whether there is relationship of landlord and tenant between the parties to the suit? OPP
2. Whether respondent is in arrears of rent since 1.1.1994? OPP
3. Whether shop has become unfit for human habitation, if so its effects? OPP
4. Relief.

3. Learned Rent Controller decided issue Nos. 1 and 2 against the present petitioner whereas issue No. 3 was decided in favour of the tenant. The Appellants Authority affirmed the findings on issue Nos. 1 and 2 whereas findings on issue No. 3 was reversed on the ground that the present petitioner had ceased to occupy the building for a period of 10 years and therefore it has become unfit for human habitation. However, learned Counsel for the respondent agreed that the contention raised by the learned Counsel for the petitioner that it was not open to the Appellate Authority to reverse the finding on issue No. 3 in the absence of cross-objection having been filed. Therefore, the finding of the Appellate Authority on issue No. 3 cannot be sustained and it is reversed.

4. However, learned Counsel for the petitioner vehemently contended that there existed no relationship of landlord and tenant between the parties. In fact, it was father of the petitioner who was tenant. The argument of learned Counsel for the petitioner is that admittedly Kashmir Singh, father of the present petitioner was the tenant under the previous owner and nothing has been brought on record to show how the tenancy was relinquished. He relied upon a judgment of this Court reported as [Paramjit Singh Vs. Jora Singh](#), . The case of the learned Counsel for the petitioner was that a presumption of continuity of possession is to be drawn in favour of a tenant unless by some cogent evidence or overt act it is proved that he abandoned the tenancy or was otherwise evicted in accordance with law. These observations in the case of Mansu v. Shadi Ram 1996 P.L.J 215 (S.C.) were approved in the judgment relied upon by the petitioner. However, I do not agree with the contention raised by the learned Counsel for the petitioner as the Court below on appreciation of evidence brought on record had given a positive finding that Kashmir Singh has ceased to be the tenant as possession was given to the petitioner by the previous owner as depicted in the sale-deed which was summoned by the petitioner, and was brought on record, therefore, the presumption of continuity was rightly disbelieved by the Court below.

5. It was next contended by Shri Sanjiv Gupta, learned Counsel for the petitioner that the record shows that even though two shops were purchased by way of joint sale-deed still Sarabjit Singh was shown to be owner of another shop which was not the subject matter of the present dispute. It was also the case of the petitioner that no other evidence was brought on record to prove the tenancy between the parties and therefore, the finding on issue No. 1 being the outcome of misreading of evidence cannot be sustained.

The factum of non payment of rent however, was not disputed as the petitioner reiterated the stand that there was no relationship of landlord and tenant between the parties and therefore, the rent as claimed was not payable as claimed by him. These contentions of the learned Counsel for the petitioner were controverted by Sh. P.C. Suman, learned Counsel appearing for the respondent. He made reference to para No. 1 of the petition where in the respondent-landlord had specifically

pleaded that he was owner/landlord of the shop in dispute and in reply to the said para the petitioner had specifically stated that the petitioner was the owner of shop in dispute. However, he denied to be his tenant.

6. In view of the clear admission which at no stage was withdrawn by the petitioner it is not open to him to challenge the ownership of the petitioner. Even otherwise, the sale-deed brought on record shows that both the shops were jointly purchased and therefore, both the brothers would be deemed to be co-owner of each shop and therefore there is no merit in this contention. Therefore, no fault can be found with the finding recorded on issue No. 1. In case the petitioner admitted the relationship of landlord and tenant then in view of the judgment of Hon"ble Supreme Court in case of Rakesh Wadhawan v. Jagdamba Industrial Corporation (2003) 113 P.L.R. 370 (S.C.), the case was required to be remanded for calculation of the rent payable. However, in the present case as the petitioner denied the relationship of landlord and tenant there would be hardly any justification for the Rent Controller to frame an assessment order in pursuance to the provisions to proviso to Section 13(2)(1) of the Act as held by this Court in [Yash Pal Singh Vs. Vijay Kumar](#), wherein this Court was pleased to hold as under:

7. Once the tenant has denied the relationship of landlord and tenant, then there would be hardly any justification for the Rent Controller to frame an assessment order in pursuance of the provisions of proviso of Section 13(2)(1) of the Act as interpreted by the Supreme Court in the case of Rakesh Wadhawan (2002) 131 P.L.R. 370 (S.C.) (supra). After the evidence has been led by the landlord showing the relationship of landlord-tenant, then there would be no justification to permit the tenant to deposit the arrears of rent in accordance with the interim assessment order of rent. Such an approach would create imbalance of equities and would hardly be justified. Therefore, I have no hesitation in rejecting the argument raised by the learned Counsel and reiterate my view taken in the cases of Ramanand Shastri (supra) and Hukama Devi (supra).

7. In view of what has been stated above, there is no merit in the present revision petition and the same is dismissed.