

(2003) 05 P&H CK 0205

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3215 of 1987

Nanak Singh (dead) through
L.Rs.

APPELLANT

Vs

Darshan Kumar

RESPONDENT

Date of Decision: May 21, 2003

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 12

Citation: (2004) 1 CivCC 111 : (2003) 2 RCR(Rent) 328

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Advocate: M.L. Sarin, with Mrs. Harsh Rekha, for the Appellant; J.M. Sethi, for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

Petitioner is aggrieved the order of ejectment passed on the ground that building is unfit and unsafe for human habitation. Tenant has also filed a separate application for directing the landlord to carry out necessary repairs u/s 12 of the East Punjab Urban Rent Restriction Act. The same was dismissed by both the courts below. Civil Revision No.3214 of 1987 is directed against the said order passed on the application u/s 12 of the Act. Therefore, both these revision petitions are disposed of together as common question of fact and law at arises.

2. Landlord has sought ejectment on the ground that the disputed shop in occupation of the petitioner is unfit and unsafe for human habitation. The said shop is integral part of the whole building as shown in the site plan Ex. A1. It was alleged that the substantial part of the integrated building has fallen. However, the tenant controverted the allegations of the landlord and pleaded that the building has been intentionally damaged and demolished by the landlord and therefore, the ejectment

petition is not maintainable. Apart from denying the fact that the disputed shop is integral part of the whole building, tenant has denied that the disputed shop is unfit or unsafe for human habitation.

3. The landlord led the evidence. Dhana Singh retired SDO Punjab Irrigation, AW3/A supported by the plan Ex.AW3/B. He has reported that the walls are bulging and there are dangerous cracks at many places. He has produced a number of photographs to show the condition of the building. On the other hand, the tenant has produced Shri Des Raj RW4 retired, SDE, PWD B&R. He inspected the shop in 5.8.1984 and prepared his report Ex.RW4/A. As per his report, the walls, floor and roof of shop in dispute seemed to be safe enough under the normal conditions of loading, for human habitation, but needed minor repairs to be carried out immediately.

4. Learned Rent Controller considered the reports given by the experts as well as the oral evidence led by the parties. The stand of the tenant that it is the landlord who demolished the part of the residential building was not proved on the basis of the photographs produced by the parties. The plea of the tenant that the landlord demolished the residential portion was not proved as RW3 Raj Kumar has not deposed to that extent. It is admitted by RW4 Des Raj that house on the back of the building has almost completely collapsed. The Rent Controller thus returned a finding that the plea that the landlord demolished the larger portion of the building in order to evict the tenant from a smaller portion, is not believable.

5. However, the basic issue which was canvassed before the learned Rent Controller was whether the shop has become unfit and unsafe for human habitation. It was held by the Division Bench of this Court in Sardarni Sampuran Kaur and another v. Sant Singh and another, (sic) 1982 (1) RCR (Rent) 413 (P&H) that if a substantial part of the integrated building has become unfit and unsafe then the premises in occupation of a tenant cannot be treated as a separate building and the tenant is liable to be evicted in the present. The Rent Controller found the following instances to hold that the disputed shop is integral part of the integral:-

(1) There is through and through RCC lintel in the front wall and back wall of the disputed shop below the ceiling.

(2) Roof of the shop and the covered passage to the house is made of one piece. This passage is the only means of access to the house.

(3) According to RW4 one big hall was constructed on the front side of the building and this hall was divided into shop and passage by erecting a partition wall.

(4) There is a door and window in the southern wall of the disputed shop towards the house although these are plugged with bricks.

(5) There is only one stair case to go to the roof of the house and shop.

(6) The roof of the house and roof of the shop are connected by a wooden bridge.

(7) Parapet on the front wall of disputed shop and covered passage to the house and the back wall is through and through.

6. Learned appellate authority, in appeal, has appreciated the entire evidence again and agreed with the findings recorded by the Rent Controller. The learned appellate authority found that the shop in dispute was previously a deodi and later on a partition wall was constructed thereby shortening the width of the deodi and thereby the shop in dispute had been carved out as is evident from photograph Ex.AW3/9. It is also found that there is one parnala to discharge the rain water of the roof the shop and the passage. Still further the passage wall is not a load bearing wall. On the basis of such additional facts, the learned appellate authority dismissed the appeal filed by the tenant.

7. In this Court, the counsel for the petitioner vehemently argued that the shop is a separate building. There is no means of access from the said shop to the other portion of the building. There is only one opening in the front and thus it cannot be said that it is the part of the same integrated larger building which may warrant ejectment of the tenant on the ground that the larger building has become unfit and unsafe for human habitation.

8. After going through the records and considering the arguments raised by the counsel for the petitioner, I am of the opinion that there is no material illegality or irregularity warranting interference in exercise of revisional jurisdiction. It could not be disputed by the Learned Counsel for the petitioner that the portion other than the shop has fallen down. In fact a perusal of the photographs produced by the landlord show that the entire residential area has collapsed. The sale argument raised by the Learned Counsel for the petitioner is that the shop is a separate building. However, the courts below have given cogent reasons to hold that it is part of the larger integrated building. The reasoning given by the courts below as mentioned above, could not be disputed by the counsel for the petitioner. However, it was stated that since there is no opening, no window, no door in the southern side of the wall so as to connect the shop with the residential portion, therefore it cannot be said that it is a part of the integrated building. It is a finding of fact whether the premises let out to the tenant is a separate building based upon appreciation of evidence. Such finding is permissible finding in law.

9. Adequate reasoning have been given by the courts below to hold that the premises tenanted to the tenant is part of the larger integrated building. The findings recorded by the courts below are based upon proper appreciation of evidence. No interference is called for in exercise of revisional jurisdiction. Consequently, the revision petition is dismissed. However, petitioner is granted two months time to vacate the premises.