

Pawan Kumar etc. Vs Braham Parkash

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 28, 2010

Citation: (2010) 159 PLR 744 : (2010) 4 RCR(Civil) 921 : (2010) 2 RCR(Rent) 519

Hon'ble Judges: S.D. Anand, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S.D. Anand, J.

The learned Rent Controller directed the ejectment of the petitioner-tenant from the tenanted premises by upholding the averments on behalf of the respondent-landlord that the former was accountable for the change of user and also sub-letting.

2. The findings were affirmed by the learned Appellate Authority. The petitioners-tenants are in revision against it.

3. The outer limit within which a Revisional Court can undertake the adjudicatory exercise was provided by the Apex Court in judicial

pronouncements reported as Sarla Ahuja Vs. United India Insurance Company Limited, Punjab Law Reporter 805 and Shamshad Ahmad and

Others Vs. Tilak Raj Bajaj (Deceased) through LRs. and Others, . On perusal thereof, it can safely be culled out that ""a reappraisal of evidence

can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact finding court is wholly

unreasonable. "" The constriction of revisional powers noticed, the adjudicatory exercise is undertaken as under:

4. Learned Counsel, appearing on behalf of the petitioner, raised a legal issue at the very out set by challenging the very maintainability of ejectment

petition as it pertains to more than one tenancy. The plea raised thereby was that independent ejectment petition has to be filed in respect of each

tenancy/premises.

5. The plea raised deserves to be negatived in view of law laid down by the Apex Court in S.M. Gopalkrishna Cheety v. Ganeshan and Anr. 1975

R.C.R. (Rent) 556. A similar view was obtained by the Delhi High Court in Chander Parkash Chawla v. K.K. Kapoor 1997(1) R.C.R. (Rent)

221 and this Court in Gobind Ram v. Godha Ram 1979(2) R.C.R. (Rent) 255.

6. It was, then, argued by learned Counsel for the petitioner that the finding regarding change of user also deserves to be reversed for the simple

reason that the premises had been let out as a vacant site and it could not be argued, with any justification, that there had been any change of user.

7. Though it is common ground that two rent notes Ex.P2 and Ex.P3 are in respect of vacant sites, there is evidence on record to prove that vacant

sites let out were initially used for sorting wood stones. It was after the tenancy came into being that the construction was raised and business of

bottle manufacturing was started over there and certain machines also came to be installed thereupon for the purpose aforementioned. The user of

the vacant site for the purpose of storage wood and stone is one thing and installations of machines and running of bottle manufacturing unit is,

obviously, quite another thing. I have, thus, no hesitation in affirming the finding recorded by both the Forums on point of change of user.

8. The learned Counsel, appearing on behalf of the petitioner, further argued that no evidence whatsoever is available on the record to support the

finding that there had been a subletting of the premises aforementioned.

9. There too, the learned Counsel for the petitioner does not appear to be in the know of correct factual position. It is proved on record that the

tenancy, documented vide Ex.P2 and Ex.P3 was in the name of Roshan Lal, the predecessor-in-interest of the petitioners-tenants. It was after the

death of Roshan Lal that the tenanted premises came into possession of firm M/s Vijay Kumar Pawan Kumar. It is, thus, the firm which is

presently in occupation of the tenanted premises. If a legal representative of a tenant inherited the tenancy and there was no change of user thereof,

things would be different. In this case, the projected legal representatives of deceased of original tenant are running a firm over there. It follows

therefrom that they had parted with possession of the tenanted premises in their own individual capacity. With the parting of possession, they have given

the possessory title to the firm aforementioned. It is, thus, a clear case of subletting.

10. In case of an individual tenancy, those inheriting it after the death of the original tenant, can continue with that very type of tenancy. The

individual character of tenancy cannot be converted into a tenancy in favour of the firm and if it is so (sic) as in the present case, the irresistible

finding would be that the tenanted premises had been sub let in favour of a third party.

11. In the light of foregoing discussion, the petition is held to be devoid of merit and is ordered to be dismissed. The petitioner-tenant shall have

two months time from today to vacate the premises aforementioned.