Khairati Lal Vs Bansi Dhar Acharya and others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 12, 2012

Acts Referred: Haryana Urban (Control of Rent and Eviction) Act, 1973 â€" Section 12, 13(2)(iii)
Transfer of Property Act, 1882 â€" Section 12

Citation: (2012) 168 PLR 357 : (2013) 1 RCR(Civil) 524

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: M.L. Sarin and Ms. Hemani Sarin, for the Appellant; Arun Jain , Mr. Amit Jain and Mr. Jaivir Chandel, for the Respondent

Judgement

K. Kannan, J.
The civil revision is at the instance of the tenant, who has been ordered to be evicted by the order of the Appellate

Authority. The decision of the Appellate Authority was in reversal of the order of dismissal of the petition of the landlord for eviction. The eviction

had been sought on the ground that the tenant had altered the construction by removal of three pillars and erecting a beam to support the roof

without the concurrence of the landlord. The action of the tenant constituted a material alteration to reduce the value and utility of the building and

therefore, was liable to be evicted. The contest by the tenant was on the ground that petitioner-landlord was one of the Acharyas-Pujaris of the

temple, who owned the property. All the Acharyas had been actually impleaded as co-respondents No. 2 to 11 before the Rent Controller. One

of the Acharyas, who had filed the petition namely Bansi Dhar, produced rent receipts to show that the relationship as the landlord and tenant

existed only between him and the tenant and the tenant could not have sought for any alteration of the building from any person other than the

petitioner. Consequently, the purported act of the tenant in securing some alteration of the building through the Trustees of the temple was

unauthorized. The tenant contended in defence that there had been a petition by the Trustees against the Acharyas-Pujaris for management of the

Trust and for accounting. The Trustees were claiming that a Trust deed had been executed in the year 1969 and since the property vested in the

Trust, the alterations made by the Trustees cannot be attributed as alterations by the tenant himself. It came through in evidence that the petition

filed by the Trustees was dismissed on a technical reason that Trust deed had been made subsequent to the filing of the petition and therefore, the

petition itself was not maintainable. The Rent Controller found that the relationship of landlord and tenant between the Acharya and the tenant had

been established but however, the existence of a Trust deed showed that the property vested in Trust and the alterations made by the Trust could

not constitute an actionable wrong of the tenant. Consequently, the petition was dismissed. In appeal, the Acharya contended that he had given

evidence to the effect that the property was taken by the tenant only from him and his evidence to that effect was not even cross-examined by the

tenant. The issue of ownership itself was irrelevant for consideration of whether there could have been a lawful authority for the tenant to bring

about alterations in the building through the Trustees. The Trust deed relied on by the tenant itself showed that the Trustees could carry out repairs

in respect of the entire Trust property except the temple and the four shops. Clause 10 of the Trust deed-R-39 was to the effect that the Trust was

in respect of the entire property excluding the temple and they could be given on rent and rent so collected shall be used for furthering the

objectives of the Trust. The trustees shall be entitled also to rent out the four shops referred to and the rents receipts shall be used for the

furtherance of the objective of the Trust. Relying on Clause 11, which had allowed for alterations or repairs only in respect of property except the

temple and the shops, the fact that the repairs had been brought about by the Trust itself was against the terms thereof and any alteration or repair

that constituted an actionable ground must be seen only from the landlord''s perspective. Since the landlord namely the Acharya had found the

alterations made to constitute a material impairment, it would not avail to a tenant to contend that the alterations and repairs made by the Trust

could give him any right of defence against eviction. The appeal by the Acharya was, therefore, allowed.

2. It was very clear from the rent receipts filed before the Court that the rent was being paid by the tenant only to the Acharya. It may not also be

possible to examine whether any person other than the Acharya could be said to be the landlord. The issue of ownership is irrelevant and I have no

problem in accepting the contention of learned Senior Counsel appearing on behalf of the respondent that a landlord-tenant relationship has no

bearing to the issue of ownership itself as laid down by the Supreme Court in E. Parashuraman (D) by LRs. Vs. V. Doraiswamy (D) by LRs.,

Ajay Kashyap Vs. Smt. Mohini Nijhawan, . A Full Bench of this Court had also dealt with the issue in the context of an allottee from the Housing

Board could just as well be a landlord if he had created a lease in favour of the third party, to bring home the point that even an allottee, who had

taken the property from the Housing Board to which installments were due before the allottee could have become the owner of the property, could

still maintain an action for ejectment against a tenant inducted by him. I hold as considered by both the Courts below that the Acharya was the

landlord for the tenant.

3. Learned Senior Counsel appearing on behalf of the tenant points out that contemporaneous to the institution of the petition for eviction, which

was made on 01.04.1986, the Acharya himself had filed a civil suit a week later on 07.04.1986. The suit for injunction by Acharya was in relation

to the very same property seeking for a restraint against the tenant from altering or modifying the building. The decision of the Rent Controller

dismissing the Acharya''s petition for eviction was rendered on 09.01.1991 and even when the appeal was pending before the Appellate Authority,

the civil suit filed by Acharya was dismissed on 29.10.1992 holding that he was not the owner of the premises. This was a decision rendered in the

presence of the tenant. Learned Senior Counsel appearing on behalf of the tenant also produces before me decision between the Acharya and the

Trustees that were independently instituted in relation to the temple and all properties including the shops. This suit filed on

26.04.1986/21.05.1999 has been dismissed on 21.12.1999. In an appeal filed by Bansi Dhar Acharya, the Appellate Authority again confirmed

the decision of the trial Court holding that the suit for a declaration that he and other Acharyas arrayed as defendants No. 7 to 20 being the

proforma defendants was not maintainable at all. A further appeal filed before this Court in RSA No. 1457 of 2006 was also dismissed. The

Acharyas have actually relied on an earlier petition filed by one of the Trustees before the District Court, which had been dismissed. This reference

here is brought to show that the document relied on before the Rent Control Authorities that an earlier action filed by the Trustees that was

dismissed was seen to be of no consequence and the Acharyas could not maintain an action for ownership in relation to the property including the

shop. A Special Leave to the Supreme Court also has been dismissed.

4. I had held initially that there was surely a relationship of landlord and tenant between the Acharya and the tenant. I have also held that the

question of ownership is irrelevant. The reference to the Civil Court proceedings between the Acharya and the Trust has been brought only to

show that in contemporaneous proceedings, the Acharya had lost at every turn and it has been held that the property including the shop actually

belonged to the Trust and a suit for declaration was not competent. This is to examine whether a construction or alteration that had been made at

the property could be attributed to the tenant to render him liable for eviction only because the tenant''s own landlord, who was the Acharya, was

not concurring with the repairs effected at the property. Every alteration or modification does not give rise to an action for eviction. The law

requires that the alteration or repairs was such as to impair the value and utility of the building. Learned Senior Counsel appearing on behalf of the

respondent would urge that it is not merely the act of the tenant that carries out the alteration that is actionable but if the act of alteration itself has

been caused at the instance of the tenant that would also be attributed to an act of the tenant himself. The language of Section 13(2)(iii) of the

Haryana Urban (Control of Rent and Eviction) Act, 1973 is that ""the tenant has committed or caused to be committed such act as likely to impair

materially the value or utility of the building."" Learned Senior Counsel appearing on behalf of the respondent points out that the resolution of the

Trust authorizing alterations clearly recited that the tenant had requested for some repairs to be made and that the alterations were carried out only

at the request of the tenant although it secured a higher rate of rent. The contention that the impairment of value and utility would depend on the

landlord''s perspective can never be extended illogically that the landlord could even complain of a virtual repairing that became necessary for

upkeep of the building itself to mean an impairment. I have seen through the photographs filed at the time when the local commissioner has

inspected the property and drawn a report. The pillars were literally supported through drums and loose bricks to prevent the roof from falling

down. The construction surely required a repair which is a responsibility of the landlord himself. Section 12 of the Haryana Urban (Control of Rent

and Eviction) Act, 1973 enjoins that a tenanted premises is kept in a state of repair. This is actually a statutory recognition of what even the

Transfer of Property Act provides casting an obligation on the landlord to keep the building habitable. Section 12 however is restrictive in the

sense that a landlord could be compelled to make only the repairs to a building other than structural alterations and the Controller would be

competent to direct on an application by a tenant to see that repairs are carried out and the cost of such repairs to be deducted from the rent

payable by him. The issue, therefore, is whether the tenant could have carried repairs or demanded cost of repairs to be deducted from the rent

without resort to an application u/s 12 itself. It is possible to contend that removal of pillars and allowing for a roof to be supported by a beam

amounted to a structural alteration. It would mean that even the Rent Controller would not have been competent to direct even a tenant to carry

out any of the structural alterations and giving benefit to tenant to deduct the same from the rent. In this case, the repairs were to be carried out by

the owner of the premises namely the Trustees of the Raghnath Temple. Even allowing for a latitude of the landlord to decide on what would

constitute as impairment of value and utility, I cannot understand that tottering pillars, which could have brought down the building with them if

removed and a beam kept to support the roof could ever be understood as constituting a willful act of the tenant that could impair the value and

utility of the building. I would only see the attempt of the landlord''s complaint of a material impairment as vicious and perverse that proves right the

biblical story of the true and false mother vying with each other to claim the child and the ''false mother'' willing to even sacrifice the staying of the

child to claim it. The proper course for tenant to secure safety to his own building ought to have been through his own landlord but it clearly turn

out from the records that from the year 1969 itself, there have been constant tussle between the Trustees and the Acharyas for the control and

maintenance of the property including the shops. The language of the trust deed that allows under Clause 10 for administration of whole of the

property excluding the temple must be understood as the Trustees owning the property as such in their capacity for the benefit of the deity. The

exclusion of the temple must be understood as the deity itself was the owner of the properties which were to be managed in Trust by the Trustees.

The language of Clause 11 of the trust deed is surely not happy that the right to repairs could be with reference to all the property except the

temple and the four shops. If the ownership of the shops to the Trustees itself was provided under Clause 10, the exclusion of the right to carry out

repairs for the four shops is meaningless. If the Civil Court itself in a subsequent instituted suit by Acharyas would deny a locus standi for Acharya

to contend that he is an owner of the property in relation to the shops and other buildings, a clause in the trust deed excluding the right of Trustees

to carry out repairs leads us to a strange situation when the Acharya is not the owner of the premise but Trustee, who holds ownership as such

Trustee in relation to the shop cannot carry out the repairs. It will result in an absurd situation of allowing for a property held in Trust to go in a total

state of disrepair, I would feed into the terms of the trust deed a language that it lacks. I would hold that the Trustees, who had carried out repairs

even if it had been done at the instance of the tenant, were doing what they were entitled to do. The repairs that became imperative for maintaining

the integrity of the building ought not to be taken as an actionable wrong by the tenant that could render him liable for eviction. There is a difference

between management of trust property and other property belonging to private individuals. Even the landlord who has inducted a tenant cannot

prevent a trustee from doing an act in relation to property that preserved the trust. Equity demands that the "landlord" whose locus standi to claim

the property as belonging to him is found to be suspect could not secure to him the right of eviction only to denigrate the trust or its property.

Under the circumstances, I would restore the order passed by the Rent Controller and hold that the alterations carried out were such as to render

solidity and for strengthening the integrity of the building and ought not to be taken as constituting an impairment of value and utility. The order of

eviction passed by the Appellate Authority is consequently set aside and the civil revision is allowed.