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(2012) 09 P&H CK 0381

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2531 of 1995

Khairati Lal	APPELLANT
Vs	
Bansi Dhar Acharya and others	RESPONDENT

Date of Decision: Sept. 12, 2012

Acts Referred:

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 12, 13(2)(iii)
- Transfer of Property Act, 1882 - 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.