

(2011) 05 P&H CK 0308

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1133 of 2010 (O and M)

Rajan Sharma and
Others

APPELLANT

Vs

Labh Singh and
Others

RESPONDENT

Date of Decision: May 6, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 35 Rule 3, Order 35 Rule 5
- East Punjab Urban Rent Restriction Act, 1949 - Section 13

Citation: (2011) 163 PLR 351

Hon'ble Judges: Sabina, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sabina, J.

Labh Singh and Hukam Kaur, respondents No.1 and 2, filed a petition u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 for ejectment of the present petitioners from the shop in dispute. Vide the impugned order dated 28.11.2009, the application moved by the petitioners under Order 35 Rule 3 of the CPC (CPC for short) for staying the further proceedings in the ejectment petition was dismissed. Hence, the present petition by the petitioners.

2. Learned counsel for the petitioners has submitted that initially Ishar Singh was the owner of the shop in dispute. After his death, the heirs of Ishar Singh had filed ejectment petitions against the tenants. The petitioners had filed an interpleader suit under Order 35 Rule 5 CPC to determine the rights in tenancy premises. Till the decision of the interpleader suit, the proceedings in the ejectment petition filed by respondents No.1 and 2 were liable to be stayed. In support of his arguments, learned counsel has placed reliance on Prem Lata v. Bhupinder Singh 2000 (2) RCR

461, wherein, in Para 8, it was held as under:

Order 35, Rule 5 CPC clearly spells out that the tenant has a right to file a suit against all those persons who claim their ownership/relationship of landlord or tenant through the landlord. In these circumstances, the suit of the respondent was legally maintainable and he had the cause of action to file the suit. The judgment relied upon by the counsel for the petitioner is not applicable in the facts in hand. In this case, the suit was instituted against a person who was entitled to receive the rent. In these circumstances, it was observed that such a tenant cannot file a suit against his landlord. It may also be pointed out here that the definition of landlord as given in the East Punjab Rent Restriction Act, 1949 is much wider and it has to be understood differently from the concept of ownership.

3. Learned counsel has further placed reliance on *Om Parkash Kapoor v. Nirmala Devi and others* (1988-2) PLR 148 wherein, in Para 7, it was held as under:

A plain reading of the provisions of Rule 3 of Order 35 of the CPC would show that once the court before which the suit against the plaintiff is pending, is informed of the institution of the inter pleader suit, it is clearly incumbent upon that court to stay the proceedings against such plaintiff. Stay of ejectment proceedings against the petitioner before the rent controller was thus rendered obligatory by the filing of the inter pleader suit by the petitioner- Om Parkash.

4. Learned counsel for respondents No.1 and 2, on the other hand, has submitted that the interpleader suit filed by the petitioners was not maintainable. The petitioners were depositing the rent in the Court and hence, they could not take up the plea that they did not know as to with whom the rent should be deposited by them. Moreover, respondents No.1 and 2 had filed the petition for ejectment on the ground of personal necessity. Respondents No.1 and 2 had no objection if the petitioners continued depositing rent in the Court In support of his arguments, learned counsel has placed reliance on [Raj Kumari alias Raj Rani Vs. Surjit Singh alias Bilu and Others](#), wherein, in Para 4, it was held as under:

After hearing the counsel for the parties and going through the record, I am of the view that there is no merit in the appeals. Order 35, Rule 5 of the Code of Civil Procedure, prohibits the tenant to bring a suit against his landlord for the purpose of compelling him to interplead with any person other than the person making claim through such landlord. In the case before me, after the death of Rajbans Kaur and Bhagwan Kaur the tenant started paying rent to M.S. Judge and at no stage Surjit Singh claimed himself to be landlord of the property qua the plaintiff. In tact, no evidence has been brought on record by the tenant to show that Surjit Singh initiated any proceedings either in regard to ejectment of plaintiff or recovery of rent from the plaintiff. In this situation, interpleader suit by the tenant denying the title of his landlord was not maintainable. This Court in *Jagdish Rai's* (1993-2)104 PLR 202 and [Smt. Mohani Devi Vs. Sh. Gokal Chand and Another](#), has held mat an

interpleader suit on behalf of tenant against the landlord is not maintainable. In Om Parkash Kapoor's case (1988-2) 94 PLR 148 (supra), interpleader suit on behalf of tenant was held to be maintainable because on the death of original landlord, two sets of persons sought ejectment claiming themselves to be landlords. As seen, in the present case, on behalf of Surjtt Singh, defendant, there had been no proceedings against the plaintiff for his ejectment or for recovery of rent.

5. Order 35 Rule 5 CPC reads as under:

Agents and tenants may not institute interpleader suits.-Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

6. In the present case, admittedly, Ishar Singh was the owner and landlord of the demised premises. The petitioners were the tenants under Ishar Singh. Respondents No.1 and 2 have filed a petition seeking ejectment of the petitioners on the ground of personal necessity and arrears of rent Iqbal Kaur and Sarabjit Kaur have also filed an ejectment petition against the petitioners on the ground of arrears of rent. The petitioners preferred an interpleader suit. It was prayed in the said suit that the petitioners be discharged from all the liabilities and they were prepared to deposit the rent in the Court. Admittedly, the petitioners are depositing rent in the Court. In these circumstances, the obligation of the petitioners qua deposit of rent is over. In fact, the parties could move an application to get both the ejectment petitions clubbed so that they can be decided by a common order to avoid any conflicting judgments. However, it would not be appropriate to stay the proceedings in the ejectment petition filed by respondents No.1 and 2. Moreover, the interest of the petitioners stands safeguarded as they are depositing rent in the Court. The judgments relied upon by the learned counsel for the petitioners fail to advance the case of the petitioners as these are based on different facts. No ground for interference in the impugned order by this Court is made out.

Dismissed.