

(2014) 05 P&H CK 0428

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3306 of 2013 (O&M)

Devraj

APPELLANT

Vs

Shish Ram

RESPONDENT

Date of Decision: May 8, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 5
- Constitution of India, 1950 - Article 227
- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13
- Penal Code, 1860 (IPC) - Section 120B, 420, 467, 468, 471

Citation: (2014) 4 RCR(Civil) 68 : (2014) 2 RCR(Rent) 18

Hon'ble Judges: Bharat Bhushan Parsoon, J

Bench: Single Bench

Advocate: G.S. Nagra, Advocate for the Appellant; J.P. Sharma, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Bharat Bhushan Parsoon, J.

This civil revision petition filed by the petitioner invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, seeks setting aside of the orders dated 17.4.2013 (Annexure P-5) and 31.7.2012 (Annexure P-3) passed by Additional Civil Judge (Senior Division), Narnaul whereby application of the petitioner for impleadment as legal heir of plaintiff Smt. Jamna Bai was ordered to be decided by the court after receiving evidence from the parties on the issues framed in this behalf. This order of 31.7.2012 was sought to be reviewed by the petitioner claiming himself to be legal heir of the plaintiff, which petition for review was also dismissed on 17.4.2013 imposing costs of Rs. 1,000/-. Hearing to counsel for the parties while going through the paper book has been provided.

2. A petition u/s 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter mentioned as the Act) filed by Smt. Jamna Bai widow of Remal Dass for eviction of tenant Shish Ram is pending adjudication before the Rent Controller, Narnaul. Landlady Smt. Jamna Bai is no more. Application for impleading him as legal representative of Smt. Jamna Bai was moved by the present petitioner claiming himself to be son of the landlady. Will dated 15.12.2003 from the landlady Smt. Jamna Bai has also been propounded in his favour by the petitioner averring testamentary succession.

3. This application was strongly opposed by the respondent-tenant claiming that neither the petitioner was son of Smt. Jamna Bai landlady (since deceased) nor has any legal right to file the application.

4. Hearing has been provided to the Counsel for the parties.

5. To adjudicate the matter of legal representation of landlady Smt. Jamna Bai (since deceased), the Rent Controller had framed certain issues which ipso facto do not provide any ground to challenge the said order. The learned Rent Controller (though it is wrongly mentioned in the impugned order as Additional Civil Judge [Senior Division], Narnaul) has given cogent and convincing reasons for framing the issues for deciding the application, instead of straightway deciding the same on the basis of death certificate and the Will of deceased Smt. Jamna Bai allegedly in favour of petitioner Desraj Taneja.

6. Premises in dispute were owned by Smt. Jamna Bai widow of Remal Dass. Name of mother of the petitioner is Smt. Mohan Devi. Claim of the petitioner is that Smt. Jamna Bai also had alias Smt. Mohan Devi. This aspect is also not free from doubts. If it is *prima facie* proved by the petitioner that he is the son of Smt. Jamna Bai, also known with alias Mohan Devi, he would be impleaded as legal representative. Similarly, if the petitioner, irrespective of existence or non-existence of blood relation with the landlady is able to convince the Court about testamentary succession of the landlady in his favour, even then he would be impleaded as legal representative.

7. At this stage, reference may be made to Rule 5 of Order XXII of CPC, 1908 which for ready reference is appended as below:-

"5. Determination of question as to legal representative. - Where a question arises to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the court.

Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any recorded at such trial, its findings and reasons therefore, and the Appellate Court may take the same into consideration in determining the question."

8. It is clear from this provision that where the question is as to whether a person is or is not the legal representative of a deceased, such a question is to be determined by the Court.

9. Counsel for the petitioner, on the other hand, has urged that since the dispute is not among rivals claiming legal heirship of the landlady, the application moved by the petitioner should have been straightway allowed without calling upon the petitioner to produce evidence. Reference has been made to a decision rendered by the Hon'ble Supreme Court in Suresh Kumar Bansal Vs. Krishna Bansal and Another, and another judgment of this Court in Harbans Singh v. Manjit Inder Kaur, 2004 (3) RCR (Civil) 805. There is no dispute about the law laid down in the afore-stated authorities and there cannot be any.

10. During the course of arguments, it has been urged on behalf of the respondent that the petitioner at an earlier point of time had produced his mother Smt. Mohan Devi as Smt. Jamna Bai to get the property in dispute from the Custodian Department taking benefit of the fact that name of his father as also name of husband of Smt. Jamna Bai was Remal Dass though Smt. Jamna Bai and Smt. Mohan Devi are two different, distinct and separate individuals. It is claimed that the petitioner showing his mother Smt. Mohan Devi as Smt. Jamna Bai had got prepared forged documents and had received retirement pension of Remal Dass from Govt. treasury whereas Smt. Jamna Bai had died long ago. It is claimed that the petitioner had faced trial and was held guilty and was then convicted in F.I.R. No. 340 dated 16.8.1992, inter-alia, under Sections 420, 467, 468, 471 and 120B IPC of PS City, Narnaul on 16.10.2005 and was ordered to undergo imprisonment for three years. Per contra, it is claimed by the Counsel for the petitioner that he was then acquitted in appeal.

11. The matter of heirship of Smt. Jamna Bai is not a straight and simple affair. It is rather shrouded in suspicion on more than one counts. Application of the petitioner incorporating his claim of legal representation of Smt. Jamna Bai has been ordered to be decided on certain issues of facts on which the petitioner has been called upon to produce evidence. The petitioner had made a vain attempt to get the said order reviewed by a separate petition preferred in this behalf, which was also dismissed with costs. In view of the circumstances explained earlier, there is no reason with the petitioner to shy away from satisfying the Court about genuineness of his claim with regard to his proposed impleadment as legal representative of Smt. Jamna Bai.

12. So far as judgment dated 13.3.2014 passed by Civil Judge (Junior Division), Narnaul in a suit for permanent injunction between the parties is concerned (which has been placed on record in this petition), the petitioner is at liberty to produce this judgment or any other material in his possession before the court concerned in support of his claim as legal heir of the deceased to be adjudicated by the court concerned. In view of the fore-going discussion, there being no merit in the petition, the same is accordingly dismissed.