

(2014) 05 P&H CK 0093
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 3391 of 2014

Durga Transport and Others

APPELLANT

Vs

Inderpal Singh and Others

RESPONDENT

Date of Decision : 14-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 35 Rule 35, Order 35 Rule 5, 88
Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 6A

Citation : (2014) 176 PLR 351

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Saurabh Bajaj, Advocates for the Appellant

Judgement

Rajiv Narain Raina, J.—The petitioners, who are tenants in the suit property, have approached this Court feeling aggrieved by the order dated April 4, 2014 passed by the Civil Judge (Junior Division), Karnal dismissing the application under Order 1 Rule 10 read with Section 88 of the Code of Civil Procedure, 1908 (CPC). The ground of challenge is that the learned trial Judge has misinterpreted the bar of Order 35 Rule 5 CPC. Before I go to the impugned order, a few facts may be noticed. The petitioners are tenants in the shop constructed in a building standing in Sector 3, GT Road Karnal. These shops were owned by late S. Mohar Singh who inducted the petitioners as tenants. After the death of Mohar Singh disputes arose among his legal heirs including his widow. It is the say of the petitioners that an arrangement was made and settled that the rent due from the petitioners was to be paid to Smt. Parvinder Kaur widow of Mohar Singh through her son Inderpal Singh son of Mohar Singh. However, the petitioners were served with notices by one set of the legal heirs calling upon them to deposit rent in their account. The disputes in the family of Mohar Singh resulted in a suit brought for declaration, partition and rendition of accounts instituted by Inderpal Singh who is the 1st respondent in this petition against two of his brothers and two sisters.

2. Feeling threatened by the suit and of not being sure to whom the rent was to be paid and in order to protect their tenancy so that they do not face eviction for non-payment of rent, they filed an application under Order 1 Rule 10 CPC read with Section 88 of the CPC in the suit.

3. Section 88 of the CPC deals with interpleader suits and provides situations where such suits can be instituted. Section 88 lays down that where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself. Section 88 contains a proviso.

4. Proviso informs that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

5. Order 35 of the CPC deals with interpleader suits Rule 5 thereof creates a bar against, agents and tenants from instituting such a suit. The provisions together with its illustrations are reproduced for facility of reference:--

"5. 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.

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C allege the contrary. Both claim the jewels from B. B may institute an interpleader suit against A and C."

6. In defence of the application, issues of maintainability have to be raised by the contesting parties as against a stranger to the inter se causes of action between the legal heirs and representatives of the estate of Mohar Singh. One such way forward for the tenants is via a special law which provides the remedy, that is, The Haryana Urban (Control of Rent and Eviction) Act, 1973 and the provisions of the non obstante clause of section 6A thereof which allow deposit of rent in a disputed case where the tenant is unable to identify person to whom rent is payable to save himself from eviction for non-payment of admitted rent. In case of a dispute inter se landlords where the tenant is unable to identify the person who can lawfully collect the tenant can take recourse to the provision.

7. The learned trial Court by the impugned order has non-suited the petitioners by the bar of Order 35 Rule 5. Section 88 CPC can come into play only when

there are two or more persons warring and claiming adversely to one another the same debt, money or property from another person who may have no interest other than to deliver money to the rightful claimant then he would be free to institute a suit of interpleader against all the disputing claimants to secure an order from Court to whom payment or delivery of money, in this case rent, would indemnify him. Section 88 permits institution of an interpleader suit independently but it does not create a right under Order 1 Rule 10(2) of the CPC. Order 1 Rule 10(2) permits the Court to add parties to a suit but only of such persons whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, then they may be added.

8. In this case, the suit is between the plaintiff and the members of his family. The claim is based on a testamentary Will and the lis is being adjudicated by the trial court. The suit is for declaration, partition and rendition of accounts. The presence of the petitioners as interpleading parties is not necessary to adjudicate upon, and settle all the questions involved in the suit to which they remain rank outsiders as tenants in the disputed property. No declaration is sought from Court as against the rights of the petitioning-tenants. They have no right to seek partition since they are tenants. Rendition of accounts is between the parties against each other. Rent paid by the petitioners may be open to rendition but remains between the parties and members of the family of late Mohar Singh. One of them disputing against the other four. Therefore, the application itself under Order 1 Rule 10 is not maintainable in the suit.

9. In view of the above, the petitioners are at liberty to apply under Section 88 CPC by instituting interpleader suit independently against all the claimants to identify as to whom rent is to be paid and by whom to be collected so that they do not fall in arrears of rent and thereby open to eviction. The petitioners have other alternative remedies available to them under the Haryana Rent laws as well to request the Rent Controller to accept deposit of admitted rent to save themselves from eviction on the ground of non-payment of or arrears of rent but they have no right to intermeddle in the suit to which they are not parties. Under the Haryana Rent Law, a landlord is a person authorized to collect rent and the definition of landlord is much wider and has to be understood differently from the concept of ownership.

10. Learned counsel for the petitioners, however, may not be wrong in arguing that the Civil Court was not correct in non-suited the petitioners by the bar of Order 35 Rule 5 CPC as against the legal heirs of the deceased landlord to ascertain who the real owner entitled to receive rent is but this argument does not cut any ice since Order 35 Rule 5 CPC draws strength from Section 88 and both have to be read conjointly. When so read both would suffer incapacity to admit a claim under Order 1 Rule 10. I would, therefore, hold that a joint application under Order 1 Rule 10 read with Section 88 CPC was not maintainable. Not because of Section 88 but because of the imitation placed by

Order 1 Rule 10, CPC where tenants seeking to identify person from whom rent is to be paid are not necessary to be added as a party for determining effectually and completely the dispute and for the Court to adjudicate upon and settle all the questions involved in the suit between the parties. It can never be said that the petitioners enjoying status as tenants are necessary for the Court to pass a decree.

For the foregoing reasons, no merit is found in the petition which is accordingly dismissed.