

(2008) 09 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2834 of 1988 (O&M)

Hargopal

APPELLANT

Vs

Hem Raj

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Citation : (2009) 1 ILR (P&H) 182 : (2009) 1 RCR(Civil) 637 : (2009) 1 RCR(Rent) 56

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Mr. Arun Palli, Sr. Advocate with Mr. Parminder Singh, Advocate. Mr. D.S. Brar, Advocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma J. (Oral)

1. The petitioner challenges the dismissal of his petition filed under section 13 of the East Punjab Urban Rent Restriction Act (for short the Act) seeking eviction of Hem Raj respondent from the premises in dispute. The petitioner sought eviction on the ground of subletting and that the building has become unfit and unsafe for human habitation.

2. The case set up by the petitioner was that the property in dispute was leased out to Balwant Rai at a monthly rent of Rs. 43/ for one year from 1.4.1976 to 31.3.1977. Rent Note was executed by Balwant Rai in favour of Thakar Dass on 29.6.1976. Balwant Rai died on 12.5.1983 leaving behind no legal heir.

3. It was alleged that Hem Raj respondent was liable to be evicted on the ground that Balwant Rai has sublet the demised premises to Hem Raj respondent since February, 1981. It was also claimed that the value and utility of the premises stands impaired on account of which building has become unfit and unsafe for human habitation. Arrears of rent was also claimed from 1.11.1976.

4. The application was contested on the ground that the respondent was real brother of Balwant Rai now deceased. He has succeeded to Balwant Rai and as such has become a tenant under the applicant. The factum of shop having been

taken on rent by Balwant Rai, father of Hem Raj applicant at the rate of Rs. 43/ per month was admitted. Rent claimed was paid on the first date of hearing. The allegations that the value and utility of the building has been impaired was also denied. It was also denied that building was unfit and unsafe for human habitation.

5. On appreciation of evidence brought on record, learned Rent Controller as well as learned Appellate Authority have recorded a finding that subletting is not proved on record. The court also held that the respondent has not damaged the disputed property nor impaired its value and utility. Tender was held to be valid. It was also held that there was relationship of landlord and tenant between the parties. On issue No. 5A it was held that the demised premises are fit and safe for human habitation. Consequently, the petition was dismissed.

6. Learned counsel for the petitioner challenged the orders passed by the learned Rent Controller and learned Appellate Authority on the plea that the tenancy is not heritable and therefore, once it was admitted that Balwant Rai was inducted as a tenant on his death there ceased to any relationship of landlord and tenant between the parties or in any case it would be a case of subletting.

7. Mr. D.S. Brar, learned counsel appearing on behalf of the respondent has placed reliance on the judgment of Hon'ble Supreme Court the case of Damadilal and others v. Paras Ram and others, 1976 RCR(Rent) 584 : AIR 1976 SC 2229, wherein Hon'ble Supreme Court has been pleased to lay down as under :

"12. Section 2(i) of the Madhya Pradesh Accommodation Control Act, 1961 defines 'tenant' to mean, unless the context otherwise requires.

"a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract, express or implied, would be payable for any accommodation and includes any person occupying the accommodation as a subtenant and also any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made."

The definition makes a person continuing in possession after the determination of his tenancy a tenant unless a decree or order for eviction has been made against him, thus putting him on par with a person whose contractual tenancy still subsists. The incidents of subtenancy and a contractual must therefore be the same unless and provision of the Act conveyed a contrary intention. That under this Act such a tenant retains an interest in the premises, not merely a personal right of occupation, will also appear from Section 14 which contains provisions restricting the tenant's power of subletting. Section 14 is in these terms :

"Section 14. Restrictions on subletting. (1) No tenant shall, without the previous consent in writing of the landlord

(a) sublet the whole or any part of the accommodation held by him as a tenancy,

or

(b) transfer or assign his rights in the tenancy or in any part thereof.

(2) No landlord shall claim or receive the payment of any sum as premium or puggree or claim or receive any consideration whatsoever in cash or in kind for giving his consent to the subletting of the whole or any part of the accommodation held by the tenant."

There is nothing to suggest that this section does not apply to all tenants as defined in Section 2(i). A contractual tenant has an estate or interest in premises from which he carves out what he gives to the subtenant. Section 14 read with Section 2(i) makes it clear that the so-called statutory tenant has the right to sublet in common with a contractual tenant and this is because he also has an interest in the premises occupied by him. Considering the position of the subtenant a statutory tenant in England, Lord Denning said in *Solomon v. Orwell*, (1954) All ER 874 "when a statutory tenant sublets a part of the premises he does not thereby confer any estate or interest in the sub tenant. A statutory tenant has estate or interest in himself and he cannot carve something out of nothing. The subtenant, like the statutory tenant, has only a personal right or privilege. In England the statutory tenant's right to sublet is derived from specific provisions of the Acts conceding this right to him; in the Act we are concerned with in this appeal, the right flows from his status as a tenant. This is the basic difference between the English Rent Restriction Acts and the Act under consideration and similar other Indian statutes. In a Special Bench decision of the Calcutta High Court, *Krishna Prosad Bose v. Sm. Sarajubala Das*, 65 Cal WN 293 at pp. 297, 298 : (AIR 1961 Cal 505 at p.507) Bachwat J., considering the question whether a statutory tenant continuing in occupation by virtue of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, could sublet the premises let to him, said :

"The Rent Control and Tenancy Acts create a special world of their own. They speak of life after death. The statutory tenancy arises phoenixlike out of the ashes of the contractual tenancy. The contractual tenant may die but the statutory tenant may live long thereafter. The statutory tenant is an ex tenant and yet he is a tenant."

The concept of statutory tenancy under the English Rent Acts and under the Indian statutes like the one we are concerned with in this appeal rests on different foundations. It must therefore be held that the predecessor in interest of the present respondents had a heritable interest in the premises and consequently the respondents had the right to prosecute the appeal in the High Court. Mr. Gupte's first submission thus fails."

8. In view of the law laid down by Hon"ble Supreme Court it has to be held that the tenancy was heritable and therefore, the plea of subletting is not available to the petitioner.

9. Learned counsel for the petitioner has also challenged the finding recorded by the learned courts below on the grounds that the courts below wrongly held that the building was not unfit and unsafe for human habitation. The contention of the learned counsel for the petitioner is that it was proved on record that there were some cracks in the wall and an expert was produced to prove that the building has become unfit and unsafe for human habitation.

10. However, this plea of the petitioner cannot be accepted as the learned Rent Controller and appellate authority has rightly come to the conclusion that the petitioner failed to lead any evidence to prove that the building has become unfit and unsafe for human habitation. The authorities under the Act have held that merely because there are some cracks in the wall without giving depth thereof it was not possible to hold that the building was unsafe and unfit for human habitation.

The evidence of the expert has been disbelieved as that was contrary to the evidence led by the petitioner himself while he appeared as his own witness.

Thus, in view of the evidence available concurrent finding of fact has been recorded by the courts below holding that the petitioner has failed to prove that the building has become unfit and unsafe for human habitation.

Learned counsel for the petitioner vehemently contends that Chobara was also rented out to the petitioner which has admittedly fallen down and the very fact that Chobara which was under the tenancy of the petitioner has fallen down would prove that building was unfit and unsafe for human habitation.

The contention of the petitioner cannot be accepted as no such plea has been raised by the petitioner before the learned Appellate Authority as would be clear from the order passed by the learned Appellate Authority. The only evidence brought to the notice of the learned Appellate Authority was, with regard to the shop where the respondent is running his business. Learned counsel for the petitioner has failed to show that the concurrent finding of fact suffer from any error or is perverse or was not capable of being arrived at on the basis of evidence brought on record.

No merit.

Dismissed