
(2010) 05 P&H CK 0103
In the Punjab And Haryana At Chandigarh

Manmohan Singh Gandhi

APPELLANT

Vs

Rajinder Singh Gill
 Jaswinder Singh and Others Vs
Rajinder Singh Gill

RESPONDENT

Date of Decision : 07-05-2010

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13B, 18A

Citation : (2010) 05 P&H CK 0103

Hon'ble Judges : S.D. Anand, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.D. Anand, J.—There is conceded commonness of pleadings in these three cases which are between the same parties, though qua different portions of the same premises. In the light thereof, it was agreed that these petitions have to necessarily have a common fate.

2. The respondent-landlord is one of the co-owners of the tenanted premises. He avers to be an NRI within the ambit of provisions of Section 13-B of the East Punjab Urban Rent Restriction Act (hereinafter referred to as "the Act"). He applied for eviction of the petitioner-tenant from the tenanted premises on an averment that he requires the premises for own use and occupation.

3. On being notified of the filing of the petition for ejectment u/s 13B of the Act, the petitioner-tenant (in each case) filed a plea u/s 18A of the Act for the leave of court to contest the proceedings. The plea raised was that the respondent-landlord being only one of the co-owners and yet another co-owner having already obtained a succession certificate on the death of his father, it did give rise to a triable issue on account whereof Rent Controller ought to have granted leave to contest the proceedings. It was also the plea that one of the co-owners who may be an NRI, cannot ask for ejectment of the tenant from the joint and unpartitioned premises. It is also the plea that an NRI has to restrict the relief sought to only one of the premises in terms of the provisions of Section 13B of

the Act.

4. The plea for leave to contest was resisted on behalf of the respondent-landlord on an averment that there was no triable issue inasmuch as a co-owner is entitled to apply for eviction of the tenant and further that an NRI-landlord is also entitled to obtain eviction of the tenants from different portions of the premises if those (tenanted premises) form a part of an integrated building. Qua obtaining of the succession certificate by one of the non-party co-owners, it was averred that the succession certificate, apart from not being able to outweigh the proprietary claim of another co-owner, would not negative the entitlement of an NRI co-owner from raising a plea u/s 13B of the Act.

5. The learned Rent Controller negated the plea raised before it on behalf of the petitioner-tenant, thereby impelling him to file the present revision petition.

6. Learned Senior Counsel, appearing on behalf of the petitioner-tenant, argued in favour of the invalidation of the impugned order by arguing that there were indeed triable issues in this matter and there was no way the plea for leave to contest could be decided just like that.

7. In support of the first indicated item of grievance, the learned Senior Counsel appearing on behalf of the petitioner relied upon *Kundan Singh v. Lal Singh* 2005 (1) R.C.R. 194.

8. The plea was resisted by the learned Counsel appearing on behalf of the respondent by relying upon *Kewal Krishan v. Mohan Singh* 2006 (2) R.C.R. (Civil) 442.

9. I have given my careful consideration to the point in controversy. I find the plea on behalf of the petitioner-tenant to be untenable. The reasons therefore are as under:

It is beyond the pale of controversy that the respondent-landlord is one of the co-owners of the premises in dispute which were owned by his father. On the death of his father, the property came over by inheritance to the respondent-landlord and his brothers etc. One of his brothers obtained a succession certificate which, by the very nature of things, would suggest that the applicant for the succession certificate would hold the property for self and on behalf of others entitled to it. The person, in whose favour the succession certificate had been issued, cannot set up an exclusive title in respect of the property, to the exclusion of the other co-owners/heirs.

10. The point of view projected on behalf of the respondent-landlord is supported by *Kewal Krishan's* case (supra). In that case, an NRI-landlord was a co-owner of the property under reference. The other co-owners applied for ejectment of the tenant on the grounds available to them. It was thereafter that the NRI co-owner filed a plea for ejectment of the tenant from the tenanted premises on the authority of provisions of Section 13-B of the Act. The other co-owners had sought ejectment on the grounds available to them; while the NRI co-owner

applied for eviction action on the basis of provisions of Section 13-B of the Act which could be availed of by him only. The filing of cause by an NRI in the aforesaid circumstances would appear to have been validated by the law laid down by a Coordinate Bench of this Court in Kewal Krishan's case (supra). In that case, reliance had been placed upon Kundan Singh's case (supra) which had been relied upon by the learned Senior Counsel for the petitioner. Learned Single Judge, while relying upon Dhannalal Vs. Kalawatibai and Others, , upheld the entitlement of the NRI-landlord to file an independent ejectment action. The Bench also noticed the following observations made by the Apex Court in similar circumstances in Dhannalal's case (supra):

It is well settled by at least three decisions of this Court, namely, Sri Ram Pasricha Vs. Jagannath and Others, ; Kanta Goel Vs. B.P. Pathak and Others, and Pal Singh Vs. Sunder Singh (Dead) by Lrs. and Others, , that one of the co-owners can alone and in his own right file a suit for ejectment of the tenant and it is no defence open to the tenant to question the maintainability of the suit on the ground that the other co-owners were not joined as parties to the suit. When the property forming the subject matter of eviction proceedings is owned by several owners every co-owner owns every part and every bit of the joint property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property so long as the property has not been partitioned. He can alone maintain a suit for eviction of the tenant without joining the other co-owners if such other co-owners do not object...

11. Insofar as the other co-owners are concerned, they have already made an endeavour to evict the petitioner-tenant on the grounds available to them but they did not taste success in their endeavour. That fact does not disable the respondent-landlord herein to avail of the beneficial provisions (i.e. Section 13-B of the Act) because that particular provision is available to him for lodging a claim for the ejectment of the petitioner-tenant from the premises aforementioned.

12. Insofar as the launching of ejectment action qua different premises is concerned, there can be no dispute with the proposition that an NRI/landlord can evict a tenant only once in a summary manner from the tenanted building. However, that restricted interpretation would not apply if the premises to be got vacated form a part of one integrated large building. The present is exactly a case of that category. There is no controversy that the tenanted premises involved in these three cases are a part of same premises. The plea raised on behalf of the petitioner-tenant shall stand negatived accordingly.

13. In the light of foregoing discussion, I have not been able to persuade myself to fault the impugned order on any valid count. The present is a pure and simple case wherein the respondent-landlord is the only one who is an NRI and who wanted to avail of the beneficial provisions contained in Section 13B of the Act.

14. The petition deserves to be negatived and it is so ordered accordingly. If any

judicial pronouncement in support of this view of mine is required, reference is made with the advantage to Harbhajan Singh v. Gurdial Singh 2006 (1) R.C.R. (Rent) 436 and Mukesh Kumar v. Santosh Kumari and Ors. 2007 (2) R.C.R. (Civil) 692.

15. The petitioner-tenant in each case shall have two months from today to vacate the premises under their individual tenancy.

16. A copy of this order be placed on the record of each connected file.