
(2004) 09 P&H CK 0122
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 554 of 2004

Naresh Kumar

APPELLANT

Vs

Lalit Mohan and Others

RESPONDENT

Date of Decision : 18-09-2004

Acts Referred:

Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 13(3), 15(6), 17(1)

Citation : (2005) 2 CivCC 416 : (2005) 139 PLR 721 : (2005) 1 RCR(Rent) 459

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : R.M. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is tenant's petition filed u/s 15(6) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for brevity, "the Act") challenging concurrent findings of fact recorded by both the Courts below holding that the landlord-respondents are entitled to vacant possession of the demised shop as Parmod Kumar landlord-respondent 4 who is enrolled as an Advocate requires the shop for the purposes of his office space. It has been proved on record that there is no other house/shop available for the landlord-respondent for the purpose of running his legal practice.

2. The ejectment petition u/s 13(3)(a)(ii) of the Act was filed originally by Smt. Maya Devi along with Parmod Kumar her son. However, during the pendency of the petition before the Rent Controller, Maya Devi died who was substituted by her legal heirs, namely, landlord-respondents 1 to 3. After detail examination of the oral as well as documentary evidence, the Rent Controller recorded the conclusion that the necessity of Parmod Kumar landlord-respondent 4 is bona fide as the demised shop is required by him to run his office. It has been proved that he has neither any other shop in District Bhiwani nor he has vacated any one after the year 1949. The factum that Par-mod Kumar landlord-respondent 4 is a practising advocate, at District Courts. Bhiwani has been proved by the

statement made by landlord-respondent 4 when he appeared as PW1 and another advocate Shri Joginder Singh PW3. It has also come in evidence that there was oral partition during the life time of Sita Ram, the father of landlord-respondents and the demised shop fell to the share of Parmod Kumar. The findings recorded by the Rent Controller have been affirmed by the Appellate Authority after reconsideration and review of oral as well as documentary evidence produced by the parties. The view of the Appellate Authority in this regard reads as under:-

"9. There is no denial of the fact on behalf of tenant/appellant that Parmod Kumar, petitioner No. 2 is not enrolled as a practising Advocate with the District Bar, Bhiwani. PW-2 Lalit Mohan, a brother of Parmod Kumar, petitioner proved the latter as a practising advocate at Bhiwani. He further proved that Parmod Kumar was not having any Chamber, but he used to sit alongwith Shri Joginder Singh, Advocate. PW3 Joginder Singh, Advocate at Bhiwani unequivocally proved the fact of Parmod Kumar, as practising Advocate at Bhiwani since the year 1992. He is said to have been doing legal practice with him since then. Parmod Kumar told him that he wanted to sit separately but he was not having any independent office. He further proved the fact of enrollment of Parmod Kumar as a member of District Bar, Bhiwani. Nothing could be suggested on behalf of appellant in cross-examination of PW-1 Parmod Kumar, petitioner No. 2. PW-2 Lalit Mohan, a brother of Parmod Kumar, petitioner No. 2 and PW-3 Joginder Singh, Advocate, Bhiwani that Parmod Kumar was carrying on business in Sadar Bazar, Delhi under name and style of Maya Enterprises. Need not to mention that no pleadings to this effect have previously been raised by appellant in his written reply to the petition. Besides, the fact that Parmod Kumar had been carrying on business in Sadar Bazar, Delhi under name and style of Maya Enterprises has not been cogently proved in the evidence of appellant. As rightly observed by learned Rent Controller, the visiting card mark A in the name of Maya Enterprises in no way proved the said fact to the detriment of landlord/ petitioner. Moreover, mark. A visiting card cannot be read in evidence being not formally proved.

10. Indisputably, Parmod Kumar, petitioner No. 2 is not having any other shop or building in the city Bhiwani for use and occupation as office. Since the demised shop is proved to have fallen into his share, therefore, he being a practising Advocate at Bhiwani is held to have bonafide personal necessity to seek ejectment of Naresh Kumar, tenant/appellant therefrom for office use in doing legal practice. Nothing in support of the agitated claim of tenant/appellant could be gathered after going through minutely his adduced evidence."

3. Mr. R.M.Singh, learned counsel for the tenant-petitioner has argued that partition between the family members of Sita Ram during his life time could not be deemed to have been effected because the municipal record continues to show Smt. Maya Devi as owner of the demised shop after the death of Sita Ram. The learned counsel has drawn my attention to paragraph 8 of the judgment of the Appellate Authority and argued that once Maya Devi had instituted an

ejectment petition where she has asserted herself to be the owner of the demised-shop. The learned counsel has maintained that this statement has been volunteered by Parmod Kumar PW1.

4. After hearing the learned counsel. I am of the considered view that this petition is devoid of any merit and is, thus, liable to be dismissed. It has concurrently been found by both the Courts below that Parmod Kumar who is an advocate does not have any other space for running his legal practice and u/s 13(3)(a)(ii) of the Act, a landlord is entitled to claim possession of the demised premises seeking issuance of direction to a tenant in cases of professionals who require the same for their own use as an office or consulting room for his son. Section 13(3)(a)(ii) of the Act reads as under:-"

13. Eviction of tenants. -

(1) and (2) xx xx xx xx

(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession.

(a) in the case of a residential building, if.-

(i) xx xx xx xx

(ii) he requires it for use as an office or consulting room by his son who intends to start practice as a lawyer, qualified architect or chartered accountant or as a "registered practitioner" within the meaning of that expression used in the Punjab Medical Registration Act, 1916, the Punjab Ayurvedic and Unani Practitioners Act, 1963, or the Punjab Homeopathic Practitioners Act, 1965, or for the residence of his son who is married:

Provided that such son is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be, and has not vacated it without sufficient cause after the commencement of the 1949 Act:."

5. A perusal of the above provision shows that if a landlord requires a demised premises for the use as an office or consulting room by his son who intends to start practice as a lawyer, architect, chartered accountant or as a registered medical practitioner or for the residence of his married son, he could apply to the Rent Controller for an order directing the tenant to hand over vacant possession of the demised premises to such a landlord. It has been found by both the Courts below that Parmod Kumar landlord-respondent 4 is a practising advocate and he requires the demised shop for running his legal practice. It is neither controverted nor any cross-examination has been conducted on Parmod Kumar landlord-respondent 4 who has appeared as PW1 that he was not a legal practitioner. It shows that the tenant-petitioner has accepted him as a legal practitioner. Therefore, I do not find any ground to interfere in the concurrent findings of fact recorded by both the Courts below. Even otherwise, the findings

of fact could be re-opened only if there is no evidence or the findings are so perverse that no reasonable man would record those findings as has been held by Supreme Court in the cases of *Rajinder Dhada v. Jagjit Singh* (2002) 10 S.C.C. 665; *Lekh Raj v. Muni Lal* (2001) 2 S.C.C. 762 and *Atma S. Berar Vs. Mukhtiar Singh*, .

6. The argument of the learned counsel challenging oral partition would not require any detailed consideration for a variety of reasons. Firstly this argument has not been raised in any of the Courts below and there is no assistance available from the Courts below on the issue of oral partition by recording any finding. Therefore, such a plea cannot be permitted to be raised for the first time in a petition u/s 15(6) of the Act as has been held by the Supreme Court in the case of *Karpagathachi and Others Vs. Nagarathinathachi*, . Moreover, a tenant cannot challenge an oral partition as has been held by this Court in the case of *Ram Lal v. Harbhagwan Dass*, 1995 (2) R.L.R. 557. It is well settled that oral partition of property is a permissible mode of partition which can be adopted by any undivided Hindu family as has been held in *Karpagathachi's* case (supra) and *S. Sai Reddy v. S. Narayana Reddy* (1991) 13 S.C.C. 647. Similar view has been expressed by the Supreme Court in *Bakhtawar Singh v. Gurdev Singh*, (1996) 9 SCC 370 and *Hans Raj Agarwal and Another Vs. Chief Commnr. of Income Tax and Others*, . In *Hans Raj Agarwal's* case (supra). The Supreme Court has placed reliance on the view taken by it in the case of *Nanni Bai and Others Vs. Gita Bai*, and also in the case of *Roshan Singh v. Zile Singh* AIR 1988 S.C. 881. Referring to the aforementioned judgments in *Hans Raj Agarwal's* case (supra), their Lordships observed as under:

"32. The further submission of the appellants that an oral partition was impermissible in law is erroneous. As far back as in 1958 in *Nanni Bai and Others Vs. Gita Bai*, it was held AIR 1958 S.C. 706 para 11)

"Partition in the Mitakshara sense may be only a severance of the joint status of the members of the coparcenary, that is to say, what was once a joint title has become a divided title though there has been no division of any properties by metes and bounds. Partition may also mean what ordinarily is understood by partition amongst co-sharers who may not be members of a Hindu coparcenary... For partition in the latter sense of allotting specific properties or parcels to individual coparceners, agreement amongst all the coparceners is absolutely necessary. Such a partition may be effected orally, but if the parties reduce the transaction to a formal document which is intended to be the evidence of the partition, it has the effect of declaring the exclusive title of the coparcener to whom a particular property is allotted by partition and is, thus, within the mischief of Section 17(1)(b)." (emphasis as in original)

33. This view has been affirmed in *Roshan Singh v. Zile Singh* A.I.R 1988 S.C. 881 at P.885, para 9:

"A partition may be effected orally; but if it is subsequently reduced into a form

of a document and that document purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it." (emphasis as in original)

7. Therefore, I do not find any substance in the argument raised by the learned counsel and has no hesitation to reject the same.

8. Even otherwise, the ejectment petition has been filed by the deceased mother of the landlord-respondents Smt. Maya Devi by pleading that the demised shop was required for her son for the purpose of setting up his legal practice. If oral partition is ignored and the argument of the learned counsel is accepted, nothing turns on that argument because it would be quite consistent with the statement of Parmod Kumar PW-1 who has stated that his mother Smt. Maya Devi had filed ejectment petition in 1997 because u/s 13(3)(a)(ii) of the Act, a landlord is always competent to seek ejectment of a tenant by pleading the requirement of his son or daughter who is a professional like a lawyer, architect or doctor. On this score also, the argument raised by the learned counsel for the tenant-petitioner deserves to be rejected.

9. For the reasons stated above, this petition fails and the same is dismissed.