
(1968) 10 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 411 of 1966

Prithi Raj Mehar Chand

APPELLANT

Vs

Hans Raj Gurditta Mal

RESPONDENT

Date of Decision : 22-10-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 4, Order 13 Rule 4(1), 115
East Punjab Urban Rent Restriction Act, 1949 — Section 15(5)

Citation : AIR 1969 P&H 256

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : H.L. Sarin and H.S. Awasthy, for the Appellant; P.C. Khungar, for the Respondent

Judgement

1. This is a landlord's revision petition against the decision of the Appellant Authority , reversing on appeal the order of the Rent Controller ordering the eviction of the tenant from the premises in dispute u/s 13 of the East Punjab Urban Rent Restriction Act, 1949, (hereinafter called the Act).
2. The premises in dispute is a shop situated in Muktsar, district Ferozepur, An application u/s 13 of the Act was filed by Prithi Raj against Hans Raj on the ground that the latter had failed to pay the arrears of rent from 5-5-1957.
3. This application was contested by the tenant who pleaded that the landlord was not the owner of the shop in question and there was no relationship of landlord and tenant between the parties. His case was that he was in possession of the shop for more than 12 years and had become owner thereof by adverse possession . According to him the real owners of the shop were Kishore Chand and others, who sold the same in favour of Mehar Chand, father of the landlord, more than 12 years back. It was possible that the sale had been effected benami in the name of the landlord , who was the son of Mehar Chand . Both the vendors and the vendee knew at the time of sale that the tenant was in possession of the said shop and he had become owner thereof by adverse

possession of the shop. He should have obtained its possession within time and now he had no right in it.

4. On the pleadings of the parties, the following issues were framed by the Rent Controller:

1. Whether there is a relationship of landlord and tenant between the respondent and applicant?

2. Whether the respondent has defaulted in payment of rent, in case he is a tenant and if so, what is the effect?

3. Whether the applicant has title to the property under rent and whether this Court has jurisdiction to decide the title ? Under issue No. 1, he found that there was relationship of landlord and tenant between the parties, because the tenant had executed a rent note, Exhibit P-7 , on 5th of May, 1957 in favour of the landlord and had agreed to pay rent at Rs. 20 per mensem. Under issue No. 2, it was found that the tenant had not made payment of any rent to the landlord because his own case was that he was not able to pay rent to the landlord. So far as issue No. 3 was concerned, it was held that the question of title was for the civil court, to decide and it was not within the jurisdiction of the Rent Controller to determine that matter. On these findings, the eviction application was granted.

5. Against that order, the tenant went in appeal before the Appellate Authority who reversed the finding of the Rent Controller on issue No. 1 and held that the landlord was not successful in proving the execution of the rent note, Exhibit P-7 by the tenant . Under issue NO. 2, his finding was that Hans Raj was not a tenant of Prithi Raj and he was, therefore, not liable to pay any rent to him., The finding of the Rent Controller on issue NO. 3 was not challenged before the Appellate Authority. As a result of these findings, the appeal was accepted, the order of the Rent Controller was reversed and the landlord's petition for ejectment dismissed.

6. Against this order, the present revision petition has been filed by the landlord.

7. It was agreed by the counsel for the parties that the only point to be determined in the instant case was whether there was relationship of Landlord and tenant between the parties. The question regarding the ownership of the shop was not within the jurisdiction of the Rent Controller to decide. That was a matter which had to be settled by the civil court. In order to find out whether there was a relationship of landlord and tenant between the parties the only point to be considered was whether the rent note dated 5-5-1957 had in fact been executed by the tenant in favour of the landlord.

8. Learned counsel for the petitioner, in the first instance, submitted that when the rent note was produced before the Rent Controller, it was marked "A" for identification. But after its execution was proved, it was exhibited as P-7 . His argument was that a document was exhibited only after its execution had been established . In the Instant case, according to the learned counsel , the document was exhibit as P-7 and that being so, it has to be held that its

execution had been proved. The Appellate Authority could not then give a finding that the execution of the rent note had not been established by; the landlord.

9. There is no merit in this contention. In the first place, this point was not taken either before the Appellate Authority. It was not mentioned even in the grounds of revision filed in this Court. Secondly, it cannot be held that the rent note was exhibited at all. Documents are exhibited under the provisions of Order 13, Rule 4, Code of Civil Procedure. The relevant part of that rule says-----

"(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:

- (a) the number and title of the suit,
- (b) the name of the person producing the document,
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted:

and the endorsement shall be signed or initialled by the Judge."

It would be seen that when the documents are exhibited, the particulars mentioned in the rule have to be endorsed on the said document. No such thing happened in the instant case. The Rent Controller had merely put Exhibit P-7 on the document and signed the same giving the date as 14-12-1965. It cannot therefore, be said that the document was exhibited in accordance with law. It was held in *Kolli Eranna v. Bellamkonda Thimmaiah*, AIR 1966 Andh Pra 184-

"Order 13, rule 4 C., P. C. prescribes that there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars namely:

- (a) the number and title of the suit,
- (b) the name of the person producing the document
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the Judge.

In the present case, the requirement of Clause (d) of rule 4 (1) is not satisfied since there is no statement signed by the Judge that the document has been admitted....."

10. The next contention raised by the learned counsel was that the finding of the Appellate Authority that the landlord had not been successfully proving the execution of the rent note by; the tenant was vitiated, because the Appellate Authority could not give that finding without first holding that the signature on

the rent note was not of the tenant and the same had been forged. No such finding had been arrived at by the Appellate Authority.

(The rest of the Judgment is not material for this report).

11. Revision dismissed.