
(2003) 03 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 324 of 1988

Ravinder Singh and Another	Vs	APPELLANT
Bhagwant Rai (Died) by L.Rs. and Others		RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13(3)

Citation : (2003) 135 PLR 15 : (2003) 2 RCR(Rent) 267

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : P.K. Ganga, for Anupam Gupta, for the Appellant; M.L. Sarin and Sweena Pannu, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—Ravinder Singh and Gurjit Singh, sons of Karam Singh, have filed the instant revision petition against the order passed by the Appellate Authority, Hoshiarpur, vide which the order of ejectment passed by the Rent Controller in their favour was set aside and their ejectment application u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act") filed against the respondent-tenant was dismissed.

2. The respondent-Bhagwant Rai was inducted as a tenant on the premises in question which consists of two rooms, two kitchens and one bathroom on the ground floor at the rate of Rs. 65/- per month, by Karam Singh, father of the petitioners. The said Karam Singh was having six sons. In the year 1981, he partitioned his property, of which the demised premises is a part, among his six sons by a collusive decree dated 19th August, 1981 (Ex. A2). According to the said collusive decree, the portion marked as "GBEL." in the site plan (Ex. A1) fall in the share of the petitioners-Ravinder Singh and Gurjit Singh and the portion marked as "AGLE" in the aforesaid site plan was given to Mukhtiar Singh, Dilbagh Singh and Manmohan Singh, the other brothers of the petitioners. On the basis of the aforesaid collusive decree and family partition, the petitioners

claimed to have become owners/landlord of the premises in question which was rented out to the respondent-Bhagwant Rai by their father Karam Singh.

3. Both the petitioners filed the ejectment application against the respondent-tenant u/s 13 of the Act by alleging that the respondent was inducted as a tenant on the premises in question by their father Karam Singh at the monthly rate of Rs. 65/-. Now they require the premises in question for their personal use and occupation. They alleged that they did not own any other residential building in Hoshiarpur and they were living in the house of their father without any legal right; and the accommodation in the said house in their possession is not sufficient to meet their requirement. The said house falls in the share of their father. It was also alleged that the respondent-tenant has not paid the rent since 1st December, 1983.

4. The respondent-tenant contested the aforesaid ejectment application filed by the petitioners on various grounds, including that the aforesaid collusive decree was suffered by the father of the petitioners with a mala fide object to evict the tenant from the premises in question. The said collusive decree does not confer any title or right of owner-ship/landlordship on the petitioners. It was also urged that the petitioners did not require the premises in question for their personal necessity nor actually there existed any personal necessity with the petitioners as they are already living in the ancestral house with their father, where the accommodation is more than sufficient. The arrears of rent, as claimed, were tendered by the tenant on the first date of hearing.

5. The aforesaid ejectment application was contested only on the ground of personal necessity. Both the parties led their evidence on this issue. The Rent Controller vide his order dated 14th October, 1986 allowed the ejectment application filed by the petitioners and ordered the ejectment of the respondent-tenant. It was held that the petitioner require the premises in question for their personal use and occupation. Feeling aggrieved against the said order of ejectment, the respondent-tenant filed an appeal before the Appellate Authority, which was allowed and the order of ejectment passed by the Rent Controller was set aside and the ejectment application filed by the petitioners was dismissed. Hence, the petitioners have filed the instant revision petition.

6. Learned counsel for the petitioners strenuously argued that the Appellate Authority has set aside the ejectment order passed by the Rent Controller without properly appreciating the evidence led by the petitioners and by taking the erroneous view of the whole matter. Certain irrelevant factors, which were not even pleaded, have been taken into consideration, which absolutely have no bearing on the present case. The learned counsel further submitted that out of the six sons of Karam Singh, four sons are residing in the ancestral house. The said house only consists of 12 rooms and three kitchens. The families of all the four brothers are living separately in that house and the accommodations available with them are not sufficient to meet their requirement. It was also contended that the children of the petitioners are now grown up and they also

require independent accommodation. It was also contended by the learned counsel for the petitioners that all the four brothers are having their separate kitchens in the said house and it is not possible for the four families to live and accommodate themselves in the ancestral house. The learned counsel further submitted that when the ejectment application was decided by the Courts below, the four brothers of the petitioners were residing abroad and now out of four, two brothers have come back to India and at present four brothers are residing in the ancestral house along with their families. Therefore, the petitioners have established their need on the record of the case.

7. On the contrary, learned counsel for the respondent submitted that there is no illegality or irregularity in the impugned order passed by the Appellate Authority. Each and every evidence available on the record has been properly appreciated and considered and thereafter a finding of a fact has been recorded to the effect that the need of the petitioners of the house in question for their personal use and occupations not bona fide.

8. I have heard the learned counsel for the parties and have perused the record of the case.

9. The Appellate Authority has passed the impugned order on four reasons. Firstly, it was held that as per the collusive decree (Ex.A2), site plan (Ex.A3) and the site plan (Ex.A1), annexed with the ejectment application, it is clear that both the petitioners are owners of only one room of the premises in question. The other room as well as the kitchen and bathroom of the demised premises fall to the share of Mukhtiar Singh, Dil-bagh Singh and Manmohan Singh. It was held that in the instant ejectment application it was not mentioned that the same was field for the benefit of the aforesaid three persons or the aforesaid three persons also require the premises in question for their personal use and occupation. In this situation when the ejectment application was filed only by two brothers for their own use and occupation, they cannot partly evict the tenant from one room on the said ground as the eviction of the tenant from a, part of the demised building is not permissible. Secondly, it was found by the Appellate Authority that the accommodation available to the petitioners in the ancestral house is not insufficient. As per the evidence available on the record, the ancestral house consists of twelve rooms besides three kitchen and two bathrooms and the same is a double storey house. Thirdly, it was found that the family partition effected by Karam Singh vide the aforesaid collusive decree was a device to evict the tenant from the premises in question, as a similar ejectment application was also field by their brother Harjit Singh against his tenant Hari Parshad and the said ejectment application was also dismissed. Further, it was found that there is no credible evidence on record to show that the wives of the petitioners cannot pull with each other and they cannot live with their mother-in-law in harmony in the ancestral house.

10. The learned counsel for the petitioners assailed the findings recorded by the Appellate Authority on the aspect of availability of sufficient accommodation in

the ancestral house. Accordingly to him, the 12 rooms accommodation in the ancestral house is not sufficient to accommodate the families of four brothers, but the learned counsel for the petitioners could not point out any illegality or infirmity in the finding recorded by the Appellate Authority on the aspect of partial ejectment of the respondent-tenant.

11. I have carefully gone through the site plan (Ex.A3) which was attached with the collusive decree and the site plan (Ex.A1) which was filed by the petitioners along with the ejectment application. From the bare perusal of these two site plans, it transpires that both the petitioners are owners of only one room of the premises in question. The an other room of the premises in question along with two kitchens and bathroom forms a part of the portion which falls to the share of Mukhttar Singh, Dilbagh Singh and Manmohan Singh. It is not the case of the petitioners that the instant ejectment application was filed by the petitioners for the personal need of their aforesaid three brothers also. Nor it was their case that the instant ejectment application was filed on their behalf for their benefit. The aforesaid three brothers only have been impleaded as proforma respondents without any indication in the ejectment application about their interest in the litigation.

12. It is well settled law that where there is single indivisible contract of tenancy, it can not be split by a Court unless there is a statutory to that effect. Reference can be made in this regard to decisions of Hon"ble" Supreme Court in S. Sanyal Vs. Gian Chand, and in Habibunnisa Begum and Others Vs. G. Doraikannu Chettiar (D) By Lrs. and Others, . In the present case, it is not disputed that the contract of the tenancy is single indivisible contract. In the Act, there is no provision which provides for partial ejectment. The word "building" used in Section 13(3)(a) of the Act means the building as a whole and not part of the building demised to a particular tenant. The other three brothers of the petitioners cannot be termed as co-owners because after partition they became the full owners of the portion which fall to their share on the basis of the collusive decree. Therefore, it can not be held, as contended by the learned counsel for the petitioners, that one co-owner can maintain the ejectment application on account of bona fide requirement of other co-owners.

13. Thus, in my view, the finding by the Appellate Authority on this aspect of the matter is perfectly valid and the learned counsel for the petitioners could not point out any illegality or irregularity in the same. If it is assumed for the sake of arguments that the personal requirement of the petitioners is bona fide and the accommodation available with them in the ancestral house is insufficient, even then the partial ejectment of the respondent-tenant from the premises in question cannot be ordered.

14. In view of the aforesaid discussion, I find no merit in the revision petition and the same is hereby dismissed.