

(2011) 12 P&H CK 0168
In the Punjab And Haryana At Chandigarh
Case No : CR No. 3661 of 1992

Shivala Damodar Dass, Cinema Road, Phagwara	APPELLANT
Vs	
Nanak Chand and another	RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Citation : (2011) 12 P&H CK 0168

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Garg, J.—This judgment shall dispose of two revision petitions i.e. CR Nos.3661 and 3662 of 2011 as both these petitions have arisen out of two rent applications filed by the petitioner-landlord against the respondents on a similar ground. However, the facts are being taken from CR no. 3661 of 1992.

2. The brief facts emerging out from the impugned orders are that in the ejectment petition, the petitioner averred that respondent no. 1 is a tenant over the rented land at the rate of Rs.8/-per month who used the rented land by placing a Khokha over it and the respondent was liable to be ejected from the rented land on the following grounds:

(i) That after the expiry of the fixed period of tenancy respondent no. 1 became a statutory tenant.

(ii) That respondent no. 1 has not made the payment of rent to the petitioner landlord as agreed and therefore now the rent from 1st March, 1981 is due from respondent no. 1.

(iii) That respondent no. 1 has totally ceased to occupy the rented land as he has already left for a foreign country and has sublet the demised premises while he was statutory tenant to respondent no. 2, without the written consent of landlord.

3. Upon notice, the respondents appeared and filed written statement pleading

that Shivala Damodar Dass has never been managed by the petitioner-Society which is neither registered under the Societies Registration Act, nor has anything to do with the said Mandir i.e Shivala Damodar Dass. It was further averred that the arrears of rent with interest and costs had been tendered on the first date of hearing which were wrongly received by Sh. Bachan Singh. It was further pleaded that no alterations have been effected by him which had affected the value and utility of the rented property in any manner.

4. The petitioner filed replication denying the averments contained in the written reply and reiterating the contents of the ejectment application. On the pleadings of the parties, the Rent Controller, Phagwara framed the following issues:

1. Whether the Managing Committee and Bachan Singh have the locus stand to file this ejectment application? OPA.

2. Whether the respondent is entitled to get the tendered amount, refunded from Bachan Singh? OPR.

3. Whether the respondent has effected material alteration which has impaired the value and utility of the

premises in dispute materially? OPA

4. Whether respondent no. 1 has sublet the premises to respondent no. 2? OPA

5. Relief.

5. Both the parties led evidence in support of their respective cases. Under issue no. 1, it was held that the petitioner has failed to prove that it is duly registered under the Societies Registration Act and thus, question to file the present ejectment petition or to continue the same through its alleged President does not arise. However, since the respondent no. 1 admitted the petitioner-Managing Committee to be his landlord in a previous civil suit filed by him but the said relationship of landlord and tenant between the parties had come to an end in view of the judgment Ex.R-1 wherein it was held that Sh. Haridwar Giri Chela was in possession of the management and control of the Mandir Shivala and the land attached to the said Mandir including the premises in dispute and the petitioner-Society was restrained permanently to interfere with his possession and realising the rent from the respondent. Issue no. 2 was held in favour of the respondent. However, under issue no. 3, it was held that the respondent had raised unauthorized construction over the premises in dispute and thus, materially impaired the value and utility of the land in dispute. However, issue no. 4 was decided against the petitioner. Resultantly, the eviction application was dismissed.

6. In appeal, the Appellate Authority reversed the findings on issues no. 1 and 2 in favour of the petitioner. Findings on issue no. 4 were upheld. However, findings of the Rent Controller on issue no. 3 were reversed holding that the petitioner has failed to prove that the respondent had materially impaired the value and

utility of the premises in dispute and even the pleadings in this regard were vague.

7. It may also be noticed at this stage that in CR no. 3662 of 1992, which has arisen out of rent application no. 7 of 24.5.1984 titled as "Shivala Damodar Dass, Cinema Road, Phagwara versus Faqir Chand", similar findings were recorded by both the Courts below.

8. Challenging the aforesaid judgment of the Appellate Authority, learned counsel for the petitioner-landlord has vehemently argued that admittedly, the petitioner had rented out the land in dispute allowing the respondent-tenant to put only a Khokha on it. However, the tenant has raised permanent structure as construction had been raised by the tenant after the same were let out, therefore, the respondents were liable to be ejected as the construction on a vacant piece of land would amount to impair the value and utility of the building. However, the stand of the respondents is that the landlord has failed to prove that they have materially impaired the value and utility of the rented land in any manner. It has been further argued on behalf of the respondents that the structure put up by the respondents on the rented land cannot be said to be a permanent affixture and termed as a "Pucca" construction as there was no foundation of the walls of the said structure.

9. At this stage, it may be noticed that in a similar petition filed by the petitioner i.e. CR no. 1048 of 1993 (Shivala Damodar Dass versus Shankar Dass) decided on 11.10.2002, this Court on similar facts has held as under:

A perusal of the clause 13(2) (iii) would show that if the acts of the tenant have impaired materially the value or utility of the building or rented land, then tenant is liable to ejectment. Since the tenanted premises in the present case is a rented land, the construction thereon will impair materially the value and utility of the land. It is not the case of the tenant that they were permitted under the instrument of tenancy to raise construction. Since raising of construction was not permissible, therefore, the raising of construction of 4 rooms itself would prove material impairment of the value and utility of the vacant land. A vacant land can be put to use to many purposes whereas after construction is raised not only it restrict the user but also effect the surface of land apart from light and air. The landlord has not permitted the tenant to raise any construction, therefore, raising construction on a vacant land itself, in my opinion, will make tenants liable for ejectment under the above said clause. In *Ram Singh v. Banarsi Dass*, 1989 (1) RLR 686 : 1989 (1) RCR (Rent) 489 (P&H) raising of construction in respect of rented land has been found impairing the value and utility of the building. In 1995 HRR 411 (supra) it was held as under:

11. No doubt, these words are not pleaded by the landlord that by constructing these rooms these persons have done acts which are likely to impair materially the value or utility of the demised land, but nevertheless the fact remains that when these were leased out, there was only one room constructed thereon. Now,

they have constructed five big rooms thereon. Even in the absence of pleading to that effect that this construction is likely to impair materially the value or utility of the rented land, it can safely be concluded that this construction is likely to impair materially the value and utility of the rented land. Hence, on this ground also the Courts below have rightly held so.

10. On the other hand learned counsel appearing on behalf of the respondent has placed reliance upon a judgment titled as Smt. Savitri Devi versus Karma Singh 1996 (2) R.C.R. (Rent) 618, Om Pal versus Anand Swarup (dead by his legal representative) 1988 (2) R.C.R. (Rent) 419, Lachhman Dass versus Charan Kaur 1992 (2) R.C.R. (Rent), 696 and DR. J.S. Sodhi versus Mela Ram 2000 (1) R.C.R. (Rent) 142 to contend that where the pillars and walls are not embedded in earth and the roof is made of wooden logs and rafters and easily removable without damage to the property, it cannot be said that construction impaired the value and utility of the property. However, in the judgments on which learned counsel for the respondents has placed reliance, the construction raised by the tenant was of temporary nature and keeping in view the facts of each case, the Court has come to the conclusion that the changes do not constitute material alterations and thus, the tenant was not liable to be ejected, whereas, in both the revision petitions, respondent-Nanak Chand while appearing as RW-2 has clearly admitted that he and Fakir Chand had taken vacant place on rent and at present, the structure covering 20 x 18 feet is existing which includes portion of both the respondents and the boundary wall of the aforesaid structure is cemented one and 9 inch thick. He has further admitted that he had constructed the property after inception of the tenancy and there is no wall on the side adjoining the property of Faqir Chand and even the planks fixed on the side of Faqir Chand were removed after he constructed his shop. Said Sh. Nanak Chand in his cross-examination has further admitted that there was one boundary wall 18 feet in length in both the properties on the side of Mandir and even 3-4 iron channels, on which the tin roofs was placed are existing and the said channels are affixed with cement in the wall and bricks with cement have been affixed over the tin roof. From the aforesaid admission by the respondent, it is established that a permanent structure has been constructed by the respondent-tenant in the rented land. In view of the aforesaid overwhelming evidence on record, it cannot be disputed that by raising permanent structure in the rented land, respondents have materially impaired the value and utility of the land. It is not the case of the respondents that they were permitted to raise such construction. Since raising of construction was not permissible, therefore, the said construction itself would prove material impairment of value and utility of the vacant land. A vacant land can be put to use in many purposes, whereas, after construction is raised not only it restrict the user but also effect the surface of land apart from light and air. The aforesaid view of the Court is further supported by the judgment of this Court in Shivala Damodar Dass's case (supra).

11. In view of the aforesaid discussion, the findings of the Appellate Authority on issue no. 3 are reversed. Consequently, both the revision petitions are allowed.

Orders of the Authorities below dismissing the ejectment application are set aside. The ejectment applications are allowed and the respondents are directed to hand over the vacant possession of the demised premises within two months from today failing which the petitioner-landlord shall be entitled to execute the order of eviction against the respondent.