
(1987) 12 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2014 of 1987

Shmt. Shakuntla Sondhi

APPELLANT

Vs

Sh. Narinder Kumar Sharma and Others

RESPONDENT

Date of Decision : 15-12-1987

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13

Citation : (1988) 2 RCR(Rent) 579

Hon'ble Judges : R.N. Mittal, J

Bench : Single Bench

Advocate : A.V. Palli, for the Appellant; Ravinder Seth, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Mittal, J.—This Revision Petition has been filed by the landlady against the order of the Rent Controller, dated May 13, 1987, impleading Avinash Kumar Sharma minor as a party to the petition for ejectment u/s 13 of the East Punjab Urban Rent Restriction Act.

2. Briefly, the facts are that Mulkh Raj was a tenant under the Petitioner. He died in July, 1985. After his death, the Petitioner filed a petition for ejectment against Respondents 1 to 4 sons and Respondent No. 5, daughter and respondent No. 6, alleged sub-tenant of the deceased. During the pendency of the petition, Avinash Kumar Sharma minor son of Narinder Kumar, Respondent No 1, through his father, filed an application that the deceased had bequeathed the tenancy rights in his favour and, therefore, he was a necessary party to the proceedings. He consequently prayed that he may be ordered to be impleaded as a Respondent. The learned Rent Controller accepted the application and ordered that Avinash Kumar Sharma be impleaded as a Respondent. The Petitioner has come up in Revision against the said order to this Court.

3. Mr. Palli, learned Counsel for the Petitioner has vehemently argued that the tenancy which is statutory, could not bequeathed in favour of any person by the

deceased-tenant and consequently even if the will is proved in favour of Respondent No. 7, he did not inherit any rights. According to him in the aforesaid circumstances, he should not have been ordered to be impleaded as a party. Mr. Seth contends that the will is valid as the tenancy rights could be bequeathed by Mulkh Raj.

4. I have duly considered the arguments of the learned Counsel for the parties. However, I find force in the contention of Mr. Palli. It is not necessary to elaborate the argument, as the matter stands concluded by the Supreme Court in *Bhavarlal Labhchand Shah v. Kanaiyalal Natha-lal Intawala* AIR 1916 S.C. 600. It was a case decided under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The word "tenant" has been defined in Section 5(11) of the said Act and it inter alia includes in relation to premises let for business, trade or storage any member of the tenant's family carrying on business, trade or storage with the tenant in the said premises at the time of the death of the tenant as may continue, after his death, to carry on the business, trade or storage, as the case may be, in the said premises and as may be decided in default of agreement by the Court. In that case, a Will had been made by the tenant with regard to business premises in favour of third person. It was observed that a person occupying a non-residential premises as a tenant after the contractual period is over cannot bequeath his right to occupy the property as a tenant under a Will in favour of a legatee who is not a member of his family carrying on business, trade or storage with him in the said premises at the time of his death u/s 5(11). There is no justification to saddle the landlord with the liability to treat a stranger who is not referred to in Sub-clause (ii) of Section 5(11) of the Act as a tenant on the basis of a bequest made under a Will by the tenant. It is, thus, evident from the above observations that, a statutory tenant has no right to bequeath the tenancy rights in favour of third person. No doubt the definition of the word "tenant" is somewhat different in the East Punjab Urban Rent Restriction Act, but the ratio in the above case will apply to the tenants as defined in that Act as well. It is also relevant to point out that it is alleged in the Will by the testator that the legatee was carrying on business with the testator. The statement does not appear to be correct, as the legatee is a boy of tender age. Taking into consideration all the aforesaid circumstances, I am of the view that Mulkh Raj could not bequeath the tenancy rights of Respondent No. 7. Consequently, Respondent No. 7 is not a necessary party to the present proceedings.

5. After taking into consideration all the aforesaid circumstances, I accept the Revision Petition and dismiss the application of Respondent No. 7 for impleading him as a party. His name be deleted from the array of Respondents.

6. No order as to costs.