

(2011) 12 SHI CK 0207
In the High Court Of Himachal Pradesh
Case No : CR No. 147 of 2007

Shri Gurdev Singh

APPELLANT

Vs

Shri Khuswant Mallick and Shri Shekher Mallick

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Himachal Pradesh Urban Rent Control Act, 1987 — Section 2

Citation : (2011) 12 SHI CK 0207

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—Shri Gurdev Singh, the petitioner herein, is the landlord. Shri Ramesh Mallick, the original respondent herein, was the tenant, on whose death his two sons Shri Kushwant Mallick and Shri Shekhar Mallick, were brought on record as his legal representatives.

2. Admittedly, the tenanted premises were initially let-out by the landlord to Shri K.L. Mallick, who was succeeded by his son, Shri Ramesh Mallick, the original respondent herein. The landlord sought eviction of Shri Ramesh Mallick on twin grounds of non-payment of rent and the tenant having ceased to occupy the premises for a continuous period of twelve months without reasonable cause. Though the petition was allowed by the learned Rent Controller on the first ground, it was dismissed on the other. However, since the tenant deposited the arrears of rent alongwith costs within the stipulated period, that ground was also no more available for the landlord to evict the tenant from the premises. Being aggrieved, the landlord carried the matter in appeal before the learned Appellate Authority, though unsuccessfully. It is how the landlord is in revision before this Court.

3. I have heard the Learned Counsel for the parties and gone through the record. According to the landlord, the second ground with regard to the tenant having ceased to occupy the premises for the requisite period of twelve months is concerned, he was able to prove his case and thus make out a ground for

eviction of the tenant, which submission is seriously opposed on behalf of the tenant, according to whom, the landlord has miserably failed to prove the same.

4. At this stage, it is pertinent to notice that it was during the course of hearing that it transpired that on the death of the original tenant, late Shri K.L. Mallick, his son, late Shri Ramesh Mallick, became the tenant under the landlord, which expression also includes the predecessor-in-interest of the present landlord, Shri Gurdev Singh, the petitioner herein, within the meaning of "tenant" under Section 2(j) of the H.P. Urban Rent Control Act, 1987 (in short "the Act"), which reads as under:

2(j)"tenant" means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after termination of the tenancy and in the event of the death of such person such of his heirs as are mentioned in Schedule I to this Act and who were ordinarily residing with him at the time of his death, subject to the order of succession and conditions specified, respectively in Explanation-I and Explanation-II to this clause, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord, or a person to whom the collection of rent of fees in a public market, cart-stand or slaughter house or of tents for shops has been framed out or leased by municipal corporation or a municipal committee or a notified area committee of a cantonment board.

Explanation-I: The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows:

(a) firstly, his surviving spouse;

(b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as member of his family upto the date of his death;

(c) thirdly, his parent(s), if there is no surviving spouse, son or daughter of the deceased person, or if such surviving spouse, son, daughter, or any of them, did not ordinarily live in the premises as a member of the family of the deceased person upto the date of his death; and

(d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parent(s) of the deceased person or if such surviving spouse, son, daughter, or parent(s), or any of them did not ordinarily live in the premises as a member of the family of the deceased person upto the date of his death.

Explanation-II: The right of every successor, referred to in Explanation I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, devolve in any of his heirs; and

5. However, after the death of Shri Ramesh Mallick, the original respondent

herein, the tenancy could not have been further inherited by his sons Shri Khushwant Mallick and Shri Shekhar Mallick albeit the fact that they stand impleaded as respondents to the present petition being his legal representatives in view of the express bar contained in Explanation-II to Section 2(j) of the Act. Thus, it is manifest that Shri Khushwant Singh and Shri Shekhar Mallick, legal representatives of the deceased tenant, Shri Ramesh Mallick, the original respondent herein, do not have the legal status of a tenant, viz-a-viz the tenanted premises.

6. In view of the above, the very question whether the deceased tenant Shri Ramesh Mallick, the original respondent herein, had ceased to occupy the tenanted premises for a continuous period of twelve months or not pales into insignificance and no longer survives for adjudication at the hands of this Court, albeit the assertions on behalf of the present respondents that firstly this question cannot be raised and agitated for the first time at the revisional stage, secondly, the original respondent herein, Shri Ramesh Mallick, was not tenant of the petitioner herein, Shri Gurdev Singh, and instead the tenancy had been coming from the time of his predecessor-in-interest, thirdly, that the tenancy in favour of Shri Ramesh Mallick had not been terminated at any point of time and lastly that a fresh tenancy had been created in favour of the present respondent, Shri Khushwant Mallick and Shri Shekhar Mallick, as neither such contentions are legally available to them nor are made out from the materials on record.

7. In the result, the petition succeeds and is accordingly allowed. Consequently, the present respondents, namely, Shri Khushwant Mallick and Shri Shekhar Mallick, shall be liable to be evicted from the tenanted premises on expiry of a period of three months reckoned from today.

8. The petition as also pending CMP(s), if any, stand disposed of in the above terms.