
(1983) 08 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 283 of 1982

Smt. Indumati

APPELLANT

Vs

Kirpal Singh Lamba

RESPONDENT

Date of Decision : 18-08-1983

Acts Referred:

Citation : (1983) 2 RCR(Rent) 449

Hon'ble Judges : S.P. Goyal, J

Bench : Single Bench

Advocate : H.L. Sarin, with Mr. R.L. Sarin, for the Appellant; R.S. Mongia, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Goyal, J.—The petitioner filed this petition for ejectment of the respondent on the ground of non-payment of rent and personal necessity to occupy the premises in dispute. The Rent Controller negatived both the pleas and dismissed the petition. On appeal, the ground of personal necessity alone was pressed but the finding of the Rent Controller was affirmed by the Appellate Authority vide judgment dated July 23, 1981. Still dissatisfied, she has come up in this revision.

2. The case set up by the petitioner in her petition was that she was a lady of advanced age and the extreme cold climate of Simla was not congenial for her health because of high blood pressure from which she was suffering. In support of her plea, she examined Dr. S.P. Sood, A.W. 2. Both the authorities after critically examining his statement and the record produced by him found his statement unreliable and the plea of bad health only a pretext to get the tenant ejected. The learned counsel for the petitioner did not challenge the finding of the two authorities below in this regard but he tried to make out a new case before me relying on the statement of the petitioner that she was living at Simla with her son at his sufferance and as such was entitled to get her house vacated at Chandigarh for her own occupation. Relying on certain decisions of this Court, namely, Shrimati Shama Devi v. Shri W.N. Khanna 1981 (1) R.C.J. 191, Padam

Parshad Jain v. Atma Ram 1981 (1) R.C.J. 701, Sadhu Ram v. Sakuntla Devi 1979 (1) R.C.J. 110, Shri Guru Datt Sharma v. Shri Dharam Paul Mohindru 1980 (2) R.C.J. 168, Mohan Lal v. Tirath Ram Chopra 1982 (2) R.C.J. 161, and Anandhavee Ammal v. S.M. Khja and Co. by partner Seedi Mohamed 1967 1 M.L.J. 368, he urges that it is entirely the choice of the petitioner as to where she wanted to live and the authorities below ought to have accepted her statement unless there were very strong reasons to reject it. The argument of the learned counsel is liable to be rejected on the sole ground that petitioner is not entitled to make out a new case at this stage beyond her petition. Otherwise also all the decisions relied upon by the learned counsel are based on their own facts and could not be cited as precedents on a question of fact. In the present case, both the authorities below have found that the petitioner has been residing at Simla since a very long time and is partner in the business earlier run by her husband and now by her son. There is no evidence that the house in which she is residing was not owned by her husband or belongs exclusively to the son. If the house has devolved on the heirs from her husband she has equal share therein and is residing there in her own right and not at the sufferance of her son. The story of her illness having been disbelieved, the authorities below rightly concluded that the need of the petitioner was not genuine and the petition was merely an excuse to get the premises vacated. It may also be noticed that the finding of the bonafide need of the petitioner is essentially a finding of fact and as held in Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar, , would not be open to challenge unless shown to be improper or vitiated by some error of law. None of the arguments advanced by the learned counsel for the petitioner shows that the finding was in any way improper or vitiated by any error of law. No ground, therefore, has been made out to interfere with the concurrent finding of the authorities below that the petitioner had no bonafide need to occupy the premises in dispute.

3. Before closing the judgment I may also notice that great stress was laid on clause (4) of sub-section (3) of section 13 which provides that if the landlord fails to occupy the premises got vacated on the ground of personal need for a continuous period of twelve months from the date of obtaining possession the tenant has a right to get back the possession of the said premises. This, according to the learned counsel provides a great safeguard against ejection of the tenant on false pretext of personal necessity. The safeguard provided is wholly illusory in my view and the provision can be defeated without any inconvenience by the landlord by occupying the premises once after the order of ejection, may be even for a day. That apart the tenant cannot afford to be without accommodation for one year and once he has arranged for an alternative accommodation, it would be very hard and cumbersome for him to engage himself in the litigation again which may easily last for a couple of years. The Rent Control Legislation is primarily meant to safeguard the tenant from ejection at the whims of the landlord but this provision is operating to his detriment and causing lot of conflict in judicial pronouncements. It is, therefore,

hightime that the Government may look into this matter and the provision be amended suitably so as to serve the purpose envisaged by the said provision.

4. For the reasons recorded above, this petition fails and the same is hereby dismissed with Costs.