

(2005) 03 P&H CK 0113
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 205 of 1988

Smt. Kala Wati

APPELLANT

Vs

Ram Piari and Others

RESPONDENT

Date of Decision : 30-03-2005

Acts Referred:

Citation : (2005) 3 CivCC 9 : (2005) 140 PLR 570 : (2005) 1 RCR(Rent) 666

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : R.N. Raina and Kamaldeep Singh, for the Appellant; S.D. Bansal, for the Respondent

Final Decision : Allowed

Judgement

Viney Mittal, J.—Landlady, Kala Wati has approached this Court through the present petition. She has challenged the order dated September 16, 1987, passed by the learned Appellate Authority, Patiala whereby on an appeal filed by tenant, Ram Piari, the ejectment order passed by the learned Rent Controller, Patiala was set aside and consequently the ejectment petition filed by the landlady was dismissed.

2. Landlady, Ram Piari, filed an ejectment petition against tenants, Kala Wati and others. The ejectment of the tenants was sought on the grounds of non-payment of the arrears of rent; the tenants having caused material additions and alterations in the structure without the written consent of the landlady; the tenants having changed the user of the part of a premises and having started running a shop of electrical goods, repair of tyres and tubes; the premises being required for personal use and occupation of the landlady and her family members. The ejectment petition was contested by the tenants. They denied all the grounds of the ejectment. They claimed that premises in question was used for the same purpose for which it had been let out and therefore, there was no change of user. It was also denied that no addition or alteration were carried out by them. The personal necessity of the landlady was also denied. It was claimed

that the landlady had sufficient accommodation for her own use and occupation. The learned Rent Controller held that the tenants had not changed the user of the premises in question. However, it was held that material alterations had been carried out by the tenants without the consent of the landlady and on that account the value and utility of the premises had been impaired. Similarly the personal necessity of the landlady was held not to be proved. On the basis of the aforesaid findings, the learned Rent Controller, allowed the ejectment petition filed by the landlady and ordered ejectment of the tenants.

3. Tenant, Ram Piari filed an appeal before the Appellate Authority. The learned Authority, on reappraisal of the evidence found that no material structural alteration has been carried out by the tenants in the premises. The appellate authority also found that the landlady had not been able to prove her personal necessity of the premises in question. Accordingly, the learned appellate authority reversed the ejectment order passed by the learned Rent Controller and after allowing the appeal of the tenant, dismissed the ejectment petition filed by the landlady.

4. The landlady has now approached this Court through the present revision petition.

5. I have heard Shri R.N. Raina, learned counsel appearing for the landlady and Shri S.D. Bansal, learned counsel appearing for the respondents and with their assistance have also gone through the record of the case.

6. At the out set, it may be noticed that a Civil Miscellaneous application No. 3368-CII of 2002 was filed by the landlady for brining on record the subsequent events. A notice of the aforesaid application was issued to the counsel for the tenants and the same was ordered to be heard alongwith the main case. In the aforesaid CM application, landlady has brought out, the following facts being the subsequent events on record:

"i) That one of the sons of the petitioner, namely, Sh. Subhash Chander, expired in the year 1991, leaving behind two minor twin daughters who were three years old at the time of his death. The deceased son of the petitioner was not having any residential house of his own and was residing alongwith his family with the petitioner in the house owned by one of the sons of the petitioner, namely, Sh. N.K. Ghai.

ii) That one of the daughters of the petitioner, namely Ms. Pushpa, has since been divorced by her husband in the year 1995 and has left her matrimonial home and is now to reside with the petitioner throughout her life, having no residential house of her own anywhere in the country.

iii) That one of the son of the petitioner, namely, Sh. Pawan Kumar who is aged about 40 years, is still unmarried and is not owning any house of his own nor has the sufficient means to set up a dwelling unit for himself and as such is compelled to reside in the room constructed on the agriculture land in village

Mallomajra, near Patiala belonging to the other son of the petitioner, namely, Sh. N.K. Ghai, and as such, Sh. Pawan Kumar is also to reside with the petitioner throughout his life.

iv) That the youngest son of the petitioner, namely, Sh. Krishan Kumar who was married in the year 1995 and is having one son, is also not having any residential house of his own and as such is to reside with the petitioner in the demised premises as and when the same come to the occupation of the petitioner.

v) That the Respondent No. 2-Sh. Surinder Kumar has since purchased a house i.e. Quarter No. 13 in Desi Mehmandari, Patiala i.e. in the same locality where the demised premises are located and has since shifted with his family to the said house. The respondent No. 1 and Respondent No. 4 (Sh. Narinder Kumar-a permanent employee of Indian Overseas Bank continue to occupy the demised premises despite the fact that respondents have an inherited house constructed by the tenant-Late Sh. Girdhari Lal-husband of the Respondent No. 1, in Tazalpura, Patiala which has been rented out by them whereas the respondents have not paid the rent in respect of the demised premises for the last more than 20 years. Further Respondent No. 3, namely, Sh. Devinder Kumar son of Respondent No. 1, who was unmarried, has since expired."

7. Although a notice of the aforesaid application was issued to the learned counsel for the tenants but no reply to the aforesaid application has been filed. In these circumstances, the facts as brought on the record by the aforesaid application shall be deemed to have been admitted by the tenants.

8. Shri R.N. Raina, learned counsel for the petitioner has argued that the order of the learned appellate authority in rejecting the ground of impairment of value and utility of the premises in question was not legally sustainable in as much as the findings had been recorded therein which are contrary to the record. It has been contended that the landlady has proved on the record that the material alterations have been made by the tenants by closing the arches in the verandah, by putting out bricks and by raising construction of a room in the court yard. Shri Rana has referred to the photographs Ex.A1/A, A2/A and Ex.A3/1 to Ex. A9/1.

9. However, after taking into consideration the aforesaid photographs, coupled with the statement of N.K. Ghai, AW3, a witness produced by the landlady, I do not find that the findings recorded by the learned appellate authority suffer from any infirmity. The learned appellate authority has categorically noticed the aforesaid additions/alterations and has come to a positive conclusion that the bricks had been fixed only as a temporary measure. Further it has been observed by the learned appellate authority that from the perusal of the photographs it could not be suggested as to when and by whom the aforesaid additions and alterations had been made. The said findings recorded by the appellate authority had not been shown to be erroneous in any manner. Even if for the sake of

argument it is taken that some additions/alterations had been made by the tenants in the demised premises, still that by itself would not furnish any ground to the landlady to claim ejectment of the tenants.

10. It is well settled that each and every addition/alteration cannot be said to be sufficient to hold that the value and utility of the premises had been impaired. It is only the additions and alterations which amount to certain structural changes and which are of permanent character that could be termed to be sufficient to hold that the value and utility of the premises had been impaired. There is no material brought on the record by the landlady to prove the aforesaid fact. Once the learned appellate authority has noticed that only temporary additions/alterations had been made by the tenants, it cannot be suggested that the value and utility of the premises in question has been impaired in any manner.

11. Learned counsel for the petitioner has then argued that the finding recorded by the learned appellate authority with regard to the ground of personal necessity of the landlady is also erroneous and cannot be sustained. Learned counsel has argued that the landlady is the best judge of her own needs and it was not for the court to suggest its own opinion with regard to the needs of the landlady. On that basis it has been contended by the learned counsel that it has been proved on the record by the landlady that she had no other accommodation which was owned by her and was available to her in the entire city of Patiala. Simply because some house owned by her husband, had been sold by him at some stage, could not be a sufficient ground to reject the claim of the landlady. Learned counsel has referred to the record of the case in contending that the tenants had failed to prove that any other accommodation was available with the landlady in the locality concerned or even in the city of Patiala.

12. On the other hand Shri S.D. Bansal, learned counsel appearing for the tenants has supported the findings recorded by the learned authority. It has been argued by the learned counsel for the tenants that the accommodation in possession of the tenants was too less an accommodation to hold that the same was required by the landlady and her family for their own accommodation. Shri Bansal has also placed reliance upon the sale deeds Ex.RW4/A and Ex.RW4/B whereby the husband of the landlady had sold some house belong to him. On that account it has been submitted that once husband of the landlady sold the house which was in his possession, then the need of the landlady could not be termed to be genuine.

13. I have given my anxious consideration to the rival contentions raised by the learned counsel for the parties. In my considered view the findings recorded by the learned appellate authority with regard to the ground of personal necessity can not be legally sustained.

14. Learned Rent Controller had taken into consideration, two sale deeds Ex.RW4/A and Ex.RW4/B executed by the husband of the landlady. After taking into consideration it was held that since the aforesaid house was not: ownership of

the landlady but was owned by the husband of the landlady, therefore, the landlady was not debarred from seeking ejectment of the tenants from her own house on the ground of her personal necessity. As a matter of fact, no evidence has been brought on record by the tenants from which it can be inferred that the landlady owns any other house in Patiala. Once the landlady is not shown to be the owner or in possession of any other house then it cannot be suggested that the claim made by her that she required the premises in question for her own occupation alongwith her family members, was frivolous.

15. It is well settled that the landlady is the sole judge of her own needs. It is for her to determine her standard of living and the accommodation in which he or she wants to live. The courts cannot substitute their own opinion for the need of the landlord. Of course the mere desire of the landlord to occupy the tenanted premises himself may not be sufficient to order the ejectment of the tenant but the courts have to adopt a pragmatic approach while adjudicating upon the claim of the landlord. Once the landlady in the present case has been able to show that she did not have any other house in the locality and that she required the premises in question for her occupation alongwith her family members then there was absolutely no justification for the appellate authority to discard the aforesaid claim.

16. As noticed in the earlier portion of the order, the landlady has brought on the record subsequent events also. Since no reply has been filed to the aforesaid CM application, therefore, all the aforesaid acts as given out by the landlady shall be deemed to have been accepted by the tenants. A perusal of the aforesaid subsequent events also shows that the needs of the landlady have since increased many fold. It is also clear from the perusal of the facts, that Surinder Kumar, respondent No. 2 has since purchased his own house and has even shifted there. Even respondents No. 1 and 4 have inherited a house constructed by the original tenant, Girdhari Lal, husband of respondent No. 1. The landlady has claimed that the aforesaid house had been let out by the tenants. All the aforesaid circumstances further prove that the landlady is in dire need of the accommodation, presently in occupation of the tenants.

17. Accordingly, the findings recorded by the learned appellate authority with regard to the personal necessity of the landlady are reversed and it is held that the landlady has been able to prove that she requires the premises in question for her personal necessity.

18. As a result of the aforesaid discussion, the present revision petition is allowed. The order of the appellate authority is set aside and the tenants are directed to hand over the vacant possession of the premises in question to the landlady within a period of three months. No costs.