

(2012) 08 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 6298 of 2011 (O and M)

Smt. Manmohni and others	Vs	APPELLANT
Jasleen Ravi Inder Singh and others		RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Citation : (2012) 08 P&H CK 0023

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Advocate : Jyoti Sareen, for the Appellant; Amit Jhanji, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Tewari, J.—This petition has been filed against the concurrent judgments of the Courts below allowing the petition of the respondents for eviction of the petitioners on the ground of personal necessity. The brief facts are that the learned trial Court had rendered the petitioners liable for eviction in the event of non-payment of rent (which the petitioners subsequently paid) while holding that the respondents had failed to prove that they require the building in question for their personal necessity. The learned Appellate Court however accepted the appeal of the respondents and ordered eviction on the ground of personal necessity also.

2. Learned Counsel for the petitioners has not argued on merits of the claim of the personal necessity but has argued on the very maintainability of the petition and the adjudication thereof by the learned Rent authorities. Learned Counsel for the petitioners has argued that prior to the filing of the eviction petition the petitioners had instituted a suit for declaration that they had become the owners of the property in dispute and even in response to the petition the petitioners had averred that neither the respondents were the owners nor was there any relationship of landlord and tenant.

3. This aspect has been considered by the Courts below who held that though

the question of title normally has to be decided only by the Civil Court yet a prima-facie finding of title is permissible in case the relationship of landlord and tenant is disputed. Both the Courts below found that the property in dispute was allotted to the predecessor in interest of the landlord.

4. Learned Counsel for the petitioners has argued that this proposition of law cannot hold good when a previous suit for title is pending between the parties. She has however fairly accepted that the previous suit for title filed by the petitioners-tenants is for a declaration that they have become owner of the property in dispute by way of adverse possession. Once that is so, in any case the tenant cannot challenge atleast the antecedent ownership rights of the landlord. Further, it is now beyond the pale of any controversy that the plea of adverse possession is a shield and not a sword and therefore no suit can be filed for a declaration that the person has become owner of the property by way of adverse possession. Such a plea can be taken only in defence.

5. Learned Counsel for the petitioners has further argued that there is no rent note or rent receipt on the record. In my opinion, in our country even till date there are numerous cases of oral tenancy where no rent receipt is given by the landlord. This fact alone has never led the Courts to reach a conclusion that in fact there is no tenancy. In the present case there is oral evidence of the existence of tenancy and the Courts below have concurrently considered the same and come to the conclusion that the tenancy exists.

6. Learned Counsel for the petitioners has taken me through the findings for the Courts below but has not been able to persuade me that the findings of fact are either based on no evidence or based on such a perverse misreading of evidence so as to justify the interference of this Court to exercise extraordinary revisional jurisdiction of this Court. Petition is dismissed.