

(2002) 09 SHI CK 0026

In the High Court Of Himachal Pradesh

Case No : Civil Revision Petition No. 37 of 2000

Surjit Verma

APPELLANT

Vs

Bawa Jung Bahadur

RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:

Himachal Pradesh Urban Rent Control Act, 1987 — Section 14, 24(5)
Succession Act, 1925 — Section 2, 220, 222, 273

Citation : (2003) 1 RCR(Civil) 628 : (2003) 1 RCR(Rent) 301 : (2002) 3 ShimLC 298

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Verma, J.—This revision petition u/s 24(5) of the H.P. Urban Rent Control Act, 1987 (hereafter referred to as "the Act") is directed against the judgment dated 9.8.1999 passed by the learned Appellate Authority, Shimla whereby the appeal of the Appellant/ Petitioner (hereafter referred to as "the Petitioner") against the order of the learned Rent Controller (3), Shimla allowing the petition of the Respondents/landlord (hereafter referred to as "the Respondent") u/s 14 of the Act on the ground of nonpayment of rent has been dismissed.

2. The material and relevant facts for the purpose of disposal of this revision petition are that the Respondent filed a petition u/s 14 of the Act for judgment of the Petitioner from Flat No. 8, Quarter DEH Bawa Estate, Ward No. 3, Shimla-3 on the ground that the Petitioner is a tenant of the Respondent in the said premises on payment of rent at the rate of Rs. 175 per month but had failed to pay the rent for the period from September to December 1989 and April 1990 to June 1991.

3. The petition was resisted by the Petitioner on the preliminary objection that there was no relationship of landlord and tenant between the parties and,

therefore, the Respondent had no locus standi and cause of action to maintain the eviction petition which otherwise lacks material particulars. On merits, it was averred that the Petitioner was not in arrears of rent and had been paying the rent regularly.

4. The Respondent filed rejoinder denying the grounds of defense as taken in the reply and reaffirmed the claim as made out in the petition.

5. On the pleadings of the parties, the learned Rent Controller framed the following issues:

1. Whether the Respondent is in arrears of rent as alleged? OPP.

1-A. Whether there is no relationship of landlord and tenant between the parties, as such the Petitioner has no locus standi to maintain the present petition? OPR.

2. Relief.

6. On the basis of the evidence brought on record by the parties, the learned Rent Controller decided Issue No. 1 in favor of the Respondent and Issue No. 1-A against the Petitioner and accordingly allowed the petition.

7. Being aggrieved by the order of the Rent Controller, the Petitioner preferred CMA No. 45-S/14 of 1997 before the learned Appellate Authority, Shimla who dismissed the appeal by the impugned judgment. Hence this petition by the Petitioner.

8. I have perused the records, however, could not have the advantage of hearing the parties as none put in appearance for the parties when the case was called for hearing.

9. In view of the grounds as averred in the petition, the only question which arises for determination in this petition is whether both the learned Authorities below have wrongly held that there is relationship of landlord and tenant between the parties?

10. A perusal of the record reveals that apart from oral evidence, the Petitioner relied on a copy of the order dated 29.6.1989 Ext. R-I to prove that relationship of landlord and tenant did not exist between the parties. Order Ext. R-I was passed by the learned Rent Controller (I), Shimla in a petition u/s 14 of the Act filed by the Respondent against the Petitioner holding that Smt. Manorama Rattan Singh Bawa was the landlady of the demised premises and there was no relationship of landlord and tenants between the parties and the Respondent herein had no locus standi to file the petition. As per the averments in the revision petition, this order Ext. R-I had become final between the parties and by ignoring it the learned Authorities below could not hold the Respondent to be the landlord of the demised premises.

11. On the other hand, the Respondent to prove his status as landlord of the demised premises, in addition to the oral evidence, relied on the copy of the

order dated 13.11.1990 Ext. P-I passed by the learned Rent Controller (4), Shimla in an application u/s 14 of the Act filed by the Respondent against the Petitioner. The relationship inter se the parties was in dispute therein also and the learned Rent Controller held that in view of the appointment of the Respondent herein as Administrator of the estate of which the demised premises is a part, by virtue of letter of administration dated 30.6.1989 he is the landlord qua the Petitioner.

12. The learned Authorities below relying on Ext. P-I held that there is relationship of landlord and tenant between the parties.

13. The order Ext. R-I was passed on 29.6.1989 when the Respondent was not the appointed Administrator of the concerned estate. The letter of administration was granted to him on 30.6.1989. The effect of such grant and appointment of the Respondent as Administrator was appreciated by the learned Rent Controller in his order Ext. P-I and held the Respondent to be the landlord.

14. In this petition the Petitioner has challenged the validity of the letter of administration and status of the Respondent as the Administrator.

15. The relevant portion of Section 273 of the Indian Succession Act reads as under:

273. Conclusiveness of probate or letters of administration.-Probate or letters of administration shall have effect over all the property and estate, movable or immovable, of the deceased, throughout the State in which the same is or are granted; and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted.

16. It is evident on a bare reading of the above provisions that a letter of administration granted by a competent Court is conclusive of the "representative title" of the Administrator thereby appointed until it is revoked. In view of the conclusiveness so attached to the letter of administration, no evidence can be admitted to impeach it except in the proceedings seeking revocation of the letter of administration. Otherwise the decision of the Court granting letter of administration is a judgment in rem and thus binding on the whole world.

17. There is nothing on the record to show that the letter of administration appointing the Respondent to be the "Administrator" of the concerned estate had been revoked.

18. Section 220 of the Indian Succession Act clearly and unambiguously provides that letter of administration entitles the Administrator to have all rights of the intestate as effectually as if the administration had been granted to him at the moment after the death of the testator.

19. On a combined reading of the provisions of Sections 273 and 222 of the Indian Succession Act, the representative title of the Respondent who has been granted the letter of administration by a competent Court, cannot be denied in eviction proceedings by the Petitioner being a tenant.

20. Section 2(c) of the Act includes an "Administrator" in the definition of a landlord for the purposes of the Act. Thus, the inescapable result is that the Respondent is the landlord of the premises in dispute.

21. It appears that the Respondent brought on record a few documents to show that she is owner of the demised premises by virtue of gift made in her favour. It is pertinent to mention that in her reply to the petition the case of the Petitioner is not that she has acquired ownership of the premises in dispute by way of gift but her case is that Smt. Manorama is the landlady thereof. A case set up by a party in the evidence when at variance with the pleadings is wholly unacceptable. There fore, the statement of the Petitioner that she had acquired the ownership of the demised premises by virtue of a gift allegedly made before the reply was filed by her, being at variance with the pleadings, is wholly unacceptable. Moreover, whatever documents she had brought on record, have not been proved in accordance with law and, therefore, have rightly been rejected as evidence by the learned Authorities below. In view of her admission in the reply that she is holding the premises in question as a tenant she has rightly been held a tenant.

22. In view of the above discussion, it is fully established on the record that there is relationship of landlord and tenant between the parties. Therefore, the concurrent findings recorded in this regard by the learned Authorities below, call for no interference by this Court.

23. As a result, this petition merits dismissal and is accordingly dismissed with no orders as to costs.