

(2022) 01 SHI CK 0026

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 331 Of 2021

Sweety @ Savita

APPELLANT

Vs

Tarun Sahni And Others

RESPONDENT

Date of Decision : 07-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Order 1 Rule 10
Himachal Pradesh Urban Rent Control Act, 1987 — Section 21, 24(1)

Citation : (2022) 01 SHI CK 0026

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Virender Singh Chauhan, Pranshul Sharma, Sudhir Thakur, Ankush Verma, Dalip Sharma, Rahul Chauhan

Final Decision : Dismissed

Judgement

Vivek Singh Thakur, J

1. The instant petition has been preferred against the impugned order dated 20.10.2021, passed by the Rent Controller Solan, District Solan, H.P., in

Rent Petition No.22/2 of 2007, titled as Tarun Sahni and others vs. Manhohan Sahni and another, whereby an application preferred by the petitioner

and respondent No.7-Harish Anand, under Order 1 Rule 10 of Code of Civil Procedure (in short "CPC") for impleading them as petitioners in

the Rent Petition, has been dismissed.

2. I have heard learned counsel for the parties and have gone through the material placed before me.

3. Respondents No.1 to 4 (hereinafter referred to as "landlords/respondents") have filed Rent Petition for vacation of premises, in reference in

Rent Petition, for non-payment of arrears of rent and impairment of the premises by tenants Manmohan Sahni and Bal Krishan Sahni (respondents

No.5 and 6) sons of late Sh.Sawan Shah Sahni (hereinafter referred to as tenants).

4. The Rent Petition is at its advanced stage, wherein after hearing arguments, final order is to be pronounced. Petitioner Sweety is real sister of

tenants Manmohan Sahni and Bal Krishan Sahni. Respondent No.7 Harish Anand is son of Usha. Usha was also real sister of the petitioner and

tenants respondents No.5 and 6. Petitioner alongwith respondent No.7 Harish Anand is claiming that they are entitled to be impleaded as petitioners

for having right in the premises in question. Because, as co-owners, they are also entitled to receive rent as well as arrears of rent of the premises in

question. Premises in question is situated in Khasra No.249 situated in upper Bazaar, Mauza Lower Bazaar, Solan.

5. Claim of the petitioner and respondent No.7 is based upon entries in Jamabandi for the year 1992-1993 (Annexure P-4) wherein Sawan Shah Sahni,

father of petitioner, as well as tenants respondents No.5 and 6 have been shown as co-owner of Khasra No.249 alongwith his brothers Bhagat Ram

(father of landlords-respondents) and Teerath Ram.

6. Reliance has also been placed by the petitioner on mutation No.535 dated 30.11.1998, whereby ownership of 1/3rd share in shop situated on land

comprised in Khasra No.249/33, after death of Sawan Shah, on 22.07.1997, was transferred in favour of children of Sawan Shah Sahni namely

Girdhari Lal, Manmohan, Rajpal and Bal Kishan (all sons) and Usha, Pammi, Shammi and Sweety (all daughters) and ownership of rest 2/3rd

remained as it is i.e. in ownership of Bhagat Ram and Teerath Ram.

7. Landlords-respondents are claiming themselves as exclusive owners of the shop in question on the basis of mutation No.1272 dated 13.06.2005

whereby on the basis of family partition (Khangri Takseem), in the presence of all shareholders, shop comprised in Khasra No.249/33 has been

transferred in favour of landlord-respondents namely Tarun, Rajesh both sons and Kiran daughter and Raj Kumari (wife of late Bhagat Ram).

8. Claim of the petitioner and respondent No.7 is that being co-owners they are also entitled for arrears of rent and in case they are not added as

petitioners in Rent Petition, then for recovery of arrears of rent, for which they

are also entitled they have to file a separate suit and, therefore, their non-impleadment in the Rent Petition, would result into multiplicity of litigation. It has further been stated on behalf of the petitioner that mutation No.1272 has been assailed by the petitioner by filing a Civil Suit against the landlords-respondents in which landlords-respondents have been proceeded ex parte and, therefore, right of landlords-respondents, claimed on the basis of mutation No.1272, is under cloud and, therefore, they cannot be stated to be absolute owners of the premises in question, rather they alongwith petitioner and others are co-owners and, therefore, rejection of application filed by the petitioner and respondent No.7 is not tenable and by doing so, the Rent Controller has committed illegality and material irregularity.

9. Learned counsel for the landlord-respondents has submitted that present petition has been preferred under Article 227 of the Constitution of India, which is not maintainable in view of judgment dated 05.07.2012, passed by the Full Bench of this Court in C.R. No.136 of 2010, titled as Shri Vinod alias Raja vs. Smt. Joginder Kaur, whereby it has been concluded that any person, aggrieved by an order which is not available under Section 24(1) of the Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter referred to as 'the Act'), has to prefer an appeal as per the Scheme of CPC and, therefore, petitioner was having remedy to file appeal in consonance with the verdict of the Full Bench in C.R. No.136 of 2010 and, therefore, petition is liable to be dismissed.

10. Learned counsel for the landlord-respondents has also produced photocopy of petition filed by respondents NO.5 and 6 (tenants) against the landlords-respondents under Section 21 of the Act for depositing rent stating therein that landlords-respondents are not accepting rent despite due efforts by the petitioner. He has further submitted that in case landlord-respondents are not landlords then there was no occasion for tenants respondents No.5 and 6 to file application under Section 21 of the Act against them and further in case petitioner and respondent No.7 were and are also landlords, then tenants respondents No.5 and 6 would have arrayed them also as respondents in the application filed under Section 21 of the Act and/or would have made payment of the rent to the petitioner and/or respondent No.7, who are none else but real sister and son of real sister of

tenants respondents No.5 and 6.

11. It has further been contended on behalf of landlord-respondents that landlords-respondents, either singly or jointly with other persons claiming status of landlord who are entitled to receive rent in respect of the building, are entitled to file and maintain Rent Petition even without joining other co-owners and the claim with respect to rent or arrears of rent, if any, inter se landlords-respondents is to be decided and determined in separate independent proceedings, may be in appropriate Civil Suit, but not in Rent Petition filed by one or more of the co-owners for eviction of tenant.

12. It has further been contended on behalf of the landlord-respondents that petitioner is real sister of tenants Manmohan Sahni, Bal Krishan Sahni and respondent No.7-Harish Anand is her nephew, who is son of another sister of tenants Manmohan Sahni and Bal Krishan Sahni and they have filed application with only intention to linger on the Rent Petition in order to frustrate the claim and right of real owners/landlord- respondents. It has further been stated that Rent Petition is pending since 2007 and after period of 12 years suddenly sister and son of sister of tenants have made an appearance claiming that they are also co-owners of the premises in question and further that even if they are considered to be co-owners of the premises in question, they are not entitled to be impleaded as party at this stage and any claim put forth by them can be decided and determined in the suit already filed by them.

13. A co-owner can file a Rent Petition independently or jointly with others, but in case he prefers an Eviction Petition independently, then also other co-owners being landlords shall also be entitled for the benefits of the order passed by the Rent Controller in case they succeed in establishing their co-ownership and entitlement in the property in reference in Rent Petition. The said issue can be decided independent of Rent Petition, particularly when the persons claiming themselves as co-owners keep sleeping for inordinate unexplained long period of about 12 years. Material on record smacks collusion between tenants (respondents No.5 and 6) and applicants (petitioner and respondent No.7) in order to frustrate the claim of true owners of the property in reference.

14. Perusal of record reveals that Sawan Shah Sahni, Teerath Ram, Bhagat Ram were real brothers and they were joint owners of the shop in

reference as per Jamabandi for the year 1992-1993 and after death of Sawan Shah Sahni, his 1/3rd share in shop was inherited by his sons and

daughters namely Girdhari Lal, Manmohan, Rajpal, Bal Kishan, Usha, Pammi, Shammi and Sweety and mutation No.535 dated 30.11.1998 was

attested to that effect. Lateron, as per family settlement, this shop was given to landlord-respondents, who are wife, sons and daughter of late Bhagat

Ram (brother of Sawan Shah Sahni). On the basis of family settlement, this shop came in their share and mutation No.1272 dated 13.06.2005 was

attested in their favour in presence of co-sharers which includes petitioner also. As per latest revenue record, landlord-respondents are exclusive

owners of the premises in reference in Rent Petition. Though it has been claimed that the said mutation has been challenged by the petitioner and

others, but it is a fact that till date it has not been set aside. On the basis of latest revenue record, landlord-respondents, being exclusive owners of the

premises in reference, are entitled to maintain Rent Petition independently.

15. In case Civil Court finds that petitioner and respondent No.7 are also co-owners of the property and entitled for Rent, then appropriate decree for

recovery can be passed in the suit preferred by the petitioner. But on the basis of present status of record landlord-respondents are only owners of the

property in reference. It is also noticeable that respondents No.5 and 6-tenants are also claiming themselves to be co-owners in the property in

reference and they are denying their status of tenant and landlord between them and landlord-respondents and on the basis of such pleadings issues

have also been framed and case is at final state of hearing arguments.

16. In the aforesaid facts and circumstances, I am of the considered opinion that at this stage, there is nothing on record to substantiate claim of the

petitioner and respondent No.7 that they are co-owners of the property in reference in Rent Petition and the stand of respondents No.5-6 (tenants) is

the same as that of petitioner and respondent No.7 which indicates that petitioner and respondent No.7 have jumped into the fray at the instance of

tenants respondents No.5 and 6 in order to delay eviction proceedings. In any case, issue raised by the petitioner and respondent No.7 is already a

point in issue in Eviction Petition for the plea taken by tenants respondents No.5 and 6 in their reply to the Rent Petition. Therefore, I find no ground

for impleading petitioner and respondent No.7 as petitioners in Rent Petition and

accordingly I find no infirmity, illegality, irregularity and perversity in the impugned order passed by the Rent Controller, so as warranting interference by this Court.

17. Though, learned counsel for the landlord-respondents has raised issue of maintainability of present petition in view of decision of Full Bench in

C.R. No.136 of 2010, however, present petition has been adjudicated and decided on merit without going into the said question.

18. In view of above, petition is dismissed being devoid of merit.