

Kewal Krishan Vs. Mohan Singh

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Court : Punjab and Haryana

Decided On : Jan-09-2006

Reported in : (2006)143PLR10

Judge : Hemant Gupta, J.

Acts : [Punjab Urban Rent Restriction Act, 1949](#) - Sections 13B; Madhya Pradesh Accommodation Control Act, 1961 - Sections 23J

Appeal No. : Civil Revision No. 6938 of 2005

Appellant : Kewal Krishan

Respondent : Mohan Singh

Advocate for Def. : Vikas Behl, Adv.

Advocate for Pet/Ap. : R.C. Setia, Sr. Adv. and; Anish Setia, Adv.

Disposition : Petition dismissed

Judgement :

Hemant Gupta, J.

1. The challenge in the present petition is to an order passed by the learned Rent Controller on 8.11.2005 whereby the application for leave to contest filed by the petitioner was dismissed and consequently petition under Section 13-B of the East

[Punjab Urban Rent Restriction Act, 1949](#) (hereinafter to be referred as 'the Act') filed by the respondent was allowed.

2. The respondent has sought ejectment of the tenant, inter alia, on the ground that he has purchased the property in the year 1996 and being a Non Resident Indian, he is entitled to seek ejectment as he is the owner of the premises for the last more than five years. In support of the averment that he is a Non Resident Indian, he has produced the notarized copy of passport which shows that he is residing in the United States of America and, therefore, the respondent is proved to be a Non Resident Indian. Still further, the respondent is a co-sharer in the property in dispute and, therefore, being a co-sharer he is entitled to seek eviction of a tenant as a owner of the entire property. After considering all the arguments raised by the petitioner, the application for leave to defend was found to be without any substance and the same was dismissed.

3. In the present revision petition, learned Counsel for the petitioner has vehemently argued that the respondent is only a co-sharer and, therefore, he is not entitled to seek ejectment of the tenant. It is argued that since the respondent is not the exclusive owner of the property let out to the petitioner, therefore, eviction in a summary manner is not permissible, especially when the other co-sharers have sought ejectment of the petitioner under the ordinary law. It is further argued that such question whether a co-owner is entitled to seek eviction in a summary manner raises triable issue and, therefore, leave to defend should have been granted. Reliance has been placed upon a judgment of this Court reported as Kundan Singh v. Lal Singh (2004-3) 138 P.L.R. 530.

4. It is further argued that in a suit for partition between the co-sharers, a preliminary decree was passed. It is not known which portion will fall to the respondent in respect of which the respondent can seek eviction and, therefore, eviction order cannot be passed against the petitioner.

5. I am unable to agree with the contention raised by learned Counsel for the petitioner. The question whether a co-owner is entitled to seek the benefit of summary eviction of a tenant came up for consideration before the I Hon'ble Supreme Court in a decision reported as Dhannalal v. Kalawatibai and Ors. :

[2002]SUPP1SCR19 . In the said case, a landlord within the meaning of Section 23-J, as contemplated in Chapter III-A of the M.P. Accommodation Control Act, 1961, sought ejectment of a tenant, inter alia, on the ground that the premises is required for bona fide use of sons of Smt. Kalawatibai. The principal issue considered by the Hon'ble Supreme Court was whether out of three co-landlords, one falling within the definition of 'landlord' is entitled to have recourse to the provisions of Section 23-J, when the other two co-landlords do not fall within the definition of 'landlord' in Section 23-J. The requirements pleaded is of all the landlords but it is the widow who could take advantage of the said provision, whether recourse to the forum of the Rent Controlling Authority is permissible. After considering the various judgments, Hon'ble Supreme Court observed as under:-

It is well settled by at least three decisions of this Court, namely, Sri Ram Pasricha v. Jagannath : [1977]1SCR395 ; Kanta Goel v. B.P. Pathak : [1977]3SCR412 and Pal Singh v. Sunder Singh : [1989]1SCR67 , that one of the co-owners can alone and in his own right file a suit for ejectment of the tenant and it is no defence open to the tenant to question the maintainability of the suit on the ground that the other co-owners were not joined as parties to the suit. When the property forming the subject-matter of eviction proceedings is owned by several owners, every co-owner owns every part and every bit of the joint property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property so long as the property has not been partitioned. He can alone maintain a suit for eviction of the tenant without joining the other co-owners if such other co-owners do not object....

6. In the said judgment, the Court concluded that the major sons though co-owners may not have been joined as party to the proceedings but it would not adversely affect the maintainability of the proceedings. It would also not make any difference if they are also joined as party to the proceedings. The presence of such co-landlords as co-plaintiffs or co-applicants, as are not classified landlords as defined in Section 23-J of the Act does not alter the nature of claim preferred by the widow landlady and, therefore, does not take the proceedings out of the scope of Section 23-A(b).

7. In view of the said judgment. I am of the opinion that the mere fact that the respondent is a co-owner will not disentitle the respondent from seeking eviction of a tenant of a joint property. Till such time the property is actually partitioned by metes and bounds, the respondent owns every part and every bit of the joint property along with others. Therefore, the respondent is competent to seek eviction under Section 13-B of the Rent Act.

8. The argument that the respondent is not the owner competent to seek eviction within the meaning of Section 13-B of the Act is misconceived. The co-owner is the owner along with other owners. The mere that the some other owners are also owning the property does not deprive a co-owner of his right to seek eviction as held in the judgment of the Supreme Court referred to above.

9. It may be noticed that it is the case of the petitioner himself that the other co-owners have also sought ejectment on the ground as may be available to them. If the other co-owners are seeking ejectment on the grounds available to them, it only shows that the other co-owners are not objecting to the eviction of the tenant by the respondent.

10. The judgment referred to by learned Counsel for the petitioner is not applicable to the facts of the present case wherein leave to contest was sought claiming fraudulent family partition. The said judgment is clearly distinguishable on facts, more so, the judgment of the Supreme Court in Dhannalal's case (supra) was not brought to the notice of the Court.

11. The argument that preliminary decree has been passed in a suit for partition between the co-owners is again of no help to the petitioner. Till final decree is passed, the property retains the character of joint property, and, therefore, the respondent is entitled to seek ejectment being a co-owner.

12. In view of the above, I do not find any patent illegality or material irregularity in the order passed by the learned Rent Controller which may warrant interference by this Court in exercise of its revisional jurisdiction.

13. Consequently, the revision petition is dismissed in limine with no orders as to costs.

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