

Shiv Charan Vs. Nar Singh

Shiv Charan Vs. Nar Singh

SooperKanoon Citation : sooperkanoon.com/625088

Court : Punjab and Haryana

Decided On : Nov-26-1993

Reported in : (1993)105PLR612

Judge : Harjit Singh Bedi, J.

Acts : Haryana Urban (Control of Rent and Eviction) Act, 1973 - Sections 13 and 15(6)

Appeal No. : Civil Revision No. 2078 of 1992

Appellant : Shiv Charan

Respondent : Nar Singh

Advocate for Pet/Ap. : V.B. Aggarwal and; Satpal Singh, Advs.

Disposition : Petition allowed

Judgement :
ORDER

Harjit Singh Bedi, J.

1. The present petition arises out of the order of the appellate authority dismissing the appeal filed by the petitioner against the order dismissing the ejectment application. The petitioner, Shiv Charan, filed an application for ejectment under

Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 alleging that he was the owner-cum-landlord of the premises bearing No. 37-28 Ward No. 19, situated in Kath Mandi, Rohtak, as the premises had come to his share on account of a decree passed in Civil Suit No. 30 of 1986 on 26th February, 1986 by way of a family settlement between the heirs of Shri Chandu Lal, father of the petitioner. The case of the petitioner was that the respondent-tenant had been in occupation of the premises since the time of his father and had continued as such after his death. It was further alleged that the respondent-tenant had agreed to the enhancement of rent to Rs. 150/- per month and had in fact paid the rent at that rate from January 1983 onwards. Notice of the ejectment application was given to the respondent who appeared and contested the same by challenging the locus standi of the petitioner to file it on ground that he was not the landlord of the demised premises. On facts, it was urged that initially the rent of the shop in dispute had been fixed at Rs. 30/- per month and then to Rs. 40/- and thereafter to Rs. 50/- per month; and further that the shop in question had not been taken on rent from the father of the petitioner but had been taken on rent from the Shiv Kumar, brother of the petitioner. It was also urged that the payment of the rent had been made to Shiv Kumar regularly up to 1986 at the agreed rate of Rs. 50/- per month but thereafter Shiv Kumar had refused to accept the rent and when the same was sent twice by Money Orders, the same was also not accepted. It has further been stated that the rent was tendered in the Court on 4.9.1986 from March 1986 to September 1986, which had been accepted by the petitioner's counsel. On going through the pleadings the Rent Controller framed the following issues:-

1. Whether there is relationship of landlord and tenant between the parties? OPP.
 2. Whether the respondent is liable to be evicted from the demised premises on the grounds mentioned in para 5 of the petition? OPP.
 3. Whether the petitioner has no locus standi to bring this petition? OPR.
 4. Relief.
2. Issue Nos. 1 and 3 were decided in favour of the petitioner and issue No. 2 against him. Consequent thereto the ejectment application was dismissed. When

the matter was taken in appeal before the Appellate Authority, the findings of fact were re-affirmed with the result the appeal was dismissed.

3. The main ground urged by Mr. V.B. Aggarwal, learned counsel for the petitioner, is that the evidence in the case adduced by the parties clearly show that the rent from 1.6.1983 to 30.6.1986 that was due to the petitioner had not been paid. He has urged on the basis of the judgment reported in Smt. Chand Rani v. Sh. Amar Nath,¹ (1985-1) R.L.R. 101 and Lakhbir Singh v. Ram Parkash,² (1991-1) 99 P.L.R. 406 that the onus to prove the payment of arrears of rent lay on the tenant and the bald statement of the tenant to the effect that the payment had been made was not sufficient to discharge that onus.

4. I have heard the learned counsel for the petitioner on this aspect and find that his assertion appears to be correct. It is significant that the tenant produced Exhibit D-12 which is a copy of the Bahi entry for the year 1972 which showed the payment of rent with respect to the demised premises. It is also apparent that in the month of March, 1986 the rent had been despatched by Money Order the receipt whereof are Exhibit D-10 and D-11 but the petitioner had refused to accept the rent. It has also been urged by the tenant that with effect from March 1986 the petitioner had refused to give the receipts with regard to the payment of rent. It will, therefore, be clear that there was documentary evidence in the shape of Exhibit D-10 to D-12 which showed the payment of rent for a specified period but for the period under dispute i.e. 1.6.1983 to 30th June, 1986 there was no documentary evidence to prove any payment having been made. In this eventuality the statement of the tenant himself and his witness Lal Chand (RW2) to the effect that the rent had been paid becomes meaningless, and the dispute with regard to the quantum of rent loses its relevance in view of the above finding.

5. The Appellate Authority also found against the petitioner holding that he had become the owner of the premises in dispute only on 26th February, 1986 on account of the family settlement recorded in the shape of a court decree and, as such, prior to that date he was not entitled to seek the arrears of rent. This finding also appears to be wrong as admittedly even prior to 26th February, 1986 the petitioner was a co-owner of the property and had a right to seek appropriation of

the rent as has been held by this Court in Mathra Dass v. Smt. Ram Piari, 3 1982(1)R.L.R.222.

6. I am not unmindful of the fact that sitting on the revisional side it would be inappropriate to dislodge the findings of fact recorded by the authorities under the Act, but it appears to me that the present case is one in which there is no evidence to show that the rent had been paid for the period in dispute.

7. For the reasons recorded above, the present petition is allowed; the order of the authorities below is set aside and the ejectment of the respondent is ordered with no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com