

Hanuman Vs. Som Dutt

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Court : Punjab and Haryana

Decided On : Oct-16-1989

Reported in : (1990)97PLR504

Judge : M.S. Liberhan, J.

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

Appeal No. : Civil Revision No. 2038 of 1988

Appellant : Hanuman

Respondent : Som Dutt

Advocate for Def. : Ashok Kumar, Sr. Adv. and; Arun Sanghi, Adv.

Advocate for Pet/Ap. : H.L. Sarin, Sr. Adv. and; Pankaj Sharma and; Ashish Hand

Disposition : Petition dismissed

Judgement :

M.S. Liberhan, J.

1. The ejectment of the petitioner was sought on a number of grounds, but was ordered on the ground that the demised premises were required by the landlord for his own use and occupation. The learned counsel for the petitioner has challenged

the said finding contending that the petitioner has not come to the Court with clean hands and argued that in the ejectment petition it was averred that the petitioner did not own any other house in the urban area of Narnaul and he was living with his father as licensee. Since it was admitted by the landlord as A.W. 1 that the house in dispute was an ancestral house in which the landlord had a right to live, therefore, the finding with respect to the bona fide need cannot be sustained.

2. It is further urged that no ejectment order can be passed since the landlord is occupying the premises within the urban area in his own right and he had not sought the ejectment on the ground that the premises in his occupation are not sufficient for his family. In order to support this contention, the learned counsel for the revision-petitioner relies on *Karnail Singh v. Vidya Devi alias Bedo*, (1980) 82 P.L.R. 631 and *Romesh Kumar v. Atma Devi and Ors.*, 1985 (2) R. C. J. 566. There cannot be any dispute with the contention raised by the counsel for the petitioner that in case the landlord is in occupation of a premises in the urban area, he cannot seek ejectment of the tenant unless and until he can show that the accommodation in his occupation is not sufficient for his needs. Learned counsel for the petitioner contends that this is not the case set up in the present case.

3. The landlord specifically pleaded that he had a family constituted of himself, his wife and three children who were residing with his father and his family and there remains a dispute between his wife, his mother and father.

4. The defence taken by the tenant was that the demised premises were jointly owned by the landlord and his father and they had got a joint living and joint business. It had come in evidence that the families of the landlord and his father taken together have seventeen members and total accommodation in their occupation is constituted of three rooms only. The learned counsel for the respondent has stated at the bar that if the respondent's family is in occupation of any premises, other than the one referred by them in their statements constituted of three rooms, kitchen and a verandah, his, ejectment petition may be dismissed. Keeping this fact in view, it would be a substantial injustice to deprive the landlord of living in his own premises if he is not in occupation of any other accommodation sufficient for the family. I am satisfied with the findings arrived at by the Authorities

below that the accommodation in possession of the landlord is not only insufficient but totally inadequate. Seventeen members cannot be accommodated in just three rooms. Apart from this, the landlord has purchased the house in dispute from his collateral for his own use and occupation. His family itself is constituted of husband and wife along with three children. Nothing has been produced on record to rebut this evidence of the landlord. I find no impropriety in the findings arrived at by the Authorities below that the landlord needed the demised premises for his own use and occupation.

5. So far as the lack of bona fides is concerned, the learned counsel for the petitioner submits that the landlord had falsely stated that he was living as a licensee in the premises which are presently unfit and unsafe for human habitation. Learned counsel further contends that in view of this, it would be reasonable to raise an inference against the landlord with respect to his bona fide need and for this purpose he relies on *Tek Chand v. Wadhawa Ram*, (1981) 83 P. L. R. 49 and *Mehar Chand and Anr. v. Tilak Rai Girdhar*, (1982) 84 P. L. R. 13. I find no force in this contention inasmuch as the landlord had categorically stated in the ejectment petition that he was living with his father. Even assuming that he had a share in the small premises, it is of no consequence. He had categorically admitted on oath when he appeared in the witness-box that he was living with his father and the other members of his father's family. Nothing was kept back from the Court. Rather, the tenant had given an evasive evidence inasmuch as on one hand he took up a stand that the landlord was in occupation of a haveli constituted of eleven rooms but when further cross-examined, he stated that he did not know as to, who were staying in those rooms. In view of this, no reliance can be placed on the evidence of the tenant.

6. In view of the above observations, I find no force in the Revision Petition. The same is dismissed. However, the tenant is permitted to vacate the premises within three months from today provided the arrears of rent are deposited within one month and an undertaking is filed to the effect that the vacant possession of the demised premises shall be delivered to the landlord on or before the expiry of three months.

7. No order as to costs.

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