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Vijay Kumar Vs. Sushil Kumar and ors.

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Court : Punjab and Haryana

Decided On : Aug-05-2004

Reported in : (2005)139PLR855

Judge : M.M. Kumar, J.

Acts : East Punjab Urban Rent Restriction Act, 1949 - Sections 13, 13(3) and 15(5); Haryana Urban (Control of Rent and Eviction) Act, 1973 - Sections 15(5) and 15(6); Registration Act - Sections 17

Appeal No. : Civil Revision No. 3188 of 2003

Appellant : Vijay Kumar

Respondent : Sushil Kumar and ors.

Advocate for Def. : Y.K. Sharma, Adv.

Advocate for Pet/Ap. : Ashok Singla, Adv.

Disposition : Petition dismissed

Judgement :

M.M. Kumar, J.

1. This is tenant's petition filed Under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for brevity, 'the Act') challenging concurrent findings of facts

recorded by both the Courts below to the effect that the landlord-respondent Sushil Kumar requires the demised shop for his personal use and occupation.

2. Brief facts of the case are that the landlord-respondent filed an ejectment application Under Section 13 of the Act registered as Rent Case No. l of 7.1.1998 inter-alia on the ground that the landlord-petitioner require the demised shop for his personal use and occupation. According to the averments made in the petition it was asserted that earlier the father of the landlord-respondent was owner of the demised-shop and on 3.5.1969 he had given it on rent to Laiq Chand father of the tenant-petitioner and proforma respondents 2 to 6. The rent note was duly executed in favour of Jagan Nath father of the landlord-respondent. The rate of rent was Rs. 1,100/- which had been enhanced later. The original tenant Laiq Chand died on 14.7.1975 and the tenancy has been inherited by the tenant-petitioner and respondent Nos. 2 to 6. However, the tenant-petitioner alone is admittedly availing the tenancy rights and the other legal representatives of the deceased tenant Laiq hand have not asserted any rights of tenancy. The demised shop is claimed to have been given to the landlord-respondent in a family settlement and on 30.7.1997 a decree has also been passed in his favour by the Additional Civil Judge (Sr. Division) Malerkotla in Civil Suit No. 290 dated 2.6.1997. After the afore-mentioned decree there is a relationship of tenant and landlord between the tenant-petitioner and landlord-respondent No. l. Apart from the ground of non payment of rent, the landlord-respondent claimed that the demised shop is required for his personal necessity and occupation as he wants to start his own business in it. He claims that his need is bona fide and he has not vacated any shop within the urban area of Ahmedgarh after the commencement of the Act in 1949 nor he owns or possession any other commercial property within that area.

3. The stand taken by the tenant-petitioner was that all the respondent Nos. 2 to 6 including the tenant-petitioner were the legal heirs of Laiq Chand, the original tenant but only Vijay Kumar tenant-petitioner runs the business at the demised premises. The claim of the landlord-respondent that he has become owner of the demised premises on the basis of the decree dated 30.7.1997 has been contested by the tenant-petitioner by asserting that the decree is illegal and it does not confer

any right or title upon the landlord-respondent. It is also asserted that the landlord-respondent did not need the shop as he was already running business of selling oil since long in another shop. It was further asserted that the landlord/respondent has been owner of 8 shops and only one shop has been alienated whereas rest of the shops are lying vacant. It is alleged that the whole market was owned by the father of the landlord-respondent Jagan Nath and the landlord-himself.

4. On the vital issue as to whether the petitioner requires the demised premises for his own use and occupation, the Rent Controller found in his favour by observing that the landlord-respondent has been able to prove that he needed the demised shop bona fide to establish his own business and the tenant-petitioner did not succeed in establishing that the landlord-respondent is in possession of any other commercial property or he is running the business. The plea of the tenant-petitioner that he runs the business of selling oil with his father was not accepted because there was no evidence on record. It has been observed that the allegation of partnership of the landlord-respondent with his father could have been easily proved by summoning the record of the oil companies. Similarly, the other plea that the landlord-respondent has sold another shop by sale deed Ex. RWS/A dated 5.3.1998 after the filing of the ejectment petition has also not been accepted because the nature of the property sold was not commercial and the same was 20 ft. away from the main market. On the contrary the plea of the landlord-respondent was considered justifiable as he had to purchase brick kiln to sustain his livelihood. The afore-mentioned finding have been recorded after detailed reference to the evidence produced by the parties.

5. The learned Appellate Authority in his judgment dated 3.6.2003 has accepted the view of the Rent Controller on the issue as to whether the landlord-respondent require the demised shop for his personal use and occupation. The learned Appellate Authority observed as under:

'...I have considered this contention of the appellant/tenant Vijay Kumar and find that from the evidence available on record it cannot be inferred that the landlord Sushil Kumar does not require the demised premises for his personal use and occupation. There is in evidence that for the time being landlord, Sushil Kumar has

started some business of running a brick kiln, but it will be appreciated that this business is only a seasonal business which is not normally carried out throughout the year. As per the evidence available on the record for the brick kiln the applicant Sushil Kumar has taken on lease some land till the year 2004. That shows that brick kiln business even if the applicant, Sushil Kumar is carrying, is not his permanent business. Moreover, in the present day business age, there is the concept of liberalization and expansion in the existing business, even if a landlord is carrying on a small and un-established business temporarily to earn his livelihood, nothing stops him from expanding business to settle in his life. There is law on the point that the landlord is the best judge of his requirement. The landlord is the best person to adjudge what kind of accommodation suits to his business. His discretion cannot be curtailed by the tenants occupying his property on flimsy grounds.....'

6. The other contentions that the landlord-respondent has other property or have sold the shop or that family partition was a sham transaction were also rejected by the Appellate Authority by observing as under:

'...this argument cannot be used to the disadvantage of the landlord. Sushil Kumar, who is proved to be not having any other shop except the shop in question which, too, is in the possession of his tenant. The appellant, Vijay Kumar has talked that so many shops have been sold, but a scrutiny of evidence on record will show that the properties have been sold by Jagan Nath, father of the landlord Sushil Kumar and not Sushil Kumar himself. There is on record that vide sale deed dated 5.3.1998 some 10 marlas of land has been sold by the landlord Sushil Kumar, but the vendee has himself stated that when he purchased this property it was not a commercial property. The applicant contended during arguments that the alleged family settlement is a sham transaction and the decree dated 30.7.1997 is collusive one between the landlord, Sushil Kumar and his father Jagan Nath which has been devised by Jagan Nath as he could not himself get vacated the shop in question from his tenants as he had so many other shops and, therefore, with a view to get vacated the shop in question, Jagan Nath devised this way in the shape of fake family settlement. This contention of the appellant is also devoid of any merit. It is not a question of a devised way by Jagan Nath, as even if he did

not give the shop in question to his son, Sushil Kumar during family settlement or by way of decree even then he had a right to get it vacated for the personal requirement of his married son....'

7. Shri Ashok Singla, learned counsel for the tenant-petitioner has argued that the decree dated 30.7.1997 reciting family partition is a sham transaction and has been created with a mala fide intention of ejectment of the tenant-petitioner. According to the learned counsel such a decree is required to be registered in accordance with view taken by the Supreme Court in the case of Bhoop Singh v. Ram Singh Major A.I.R. 1996 S.C. 196. The learned counsel has also submitted that the landlord-respondent has executed the sale deed dated 5.3.1998 Ex. RW 5/A in respect of the shop which is 20 ft. away from the demised shop and he could have easily started his business in the aforementioned shop. According to the learned counsel for landlord-respondent is already running a brick kiln and does not need the demised shop for his personal use and occupation and that he has failed to prove his bona-fide necessity as required by Section 13(3)(a)(i) of the Act.

8. After hearing the learned counsel at a considerable length, I am of the considered view that no interference is called for in the concurrent findings of facts recorded by both the Courts below. There is ample evidence produced on record to prove the basic ingredients of Section 13(3)(a)(i) of the Act that the landlord-respondent requires the demised shop for his personal use and occupation. It is well settled that Under Section 15(5) of the Act, the only enquiry which would be embarked upon by this Court is to find out the legality or propriety of order or proceedings undertaken by the Courts below. Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for brevity, 'the Haryana Rent Act') is identical to that of Section 15(5) of the Act. The provisions of the Haryana Rent Act came up for consideration before the Supreme Court in the case of Vaneet Jain v. Jagjit Singh, 2000(5) S.C.C. 1, Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, (1999)6 S.C.C. 222 and Sarla Ahuja v. United India Insurance Co. Ltd., (1998)8 S.C.C. 119 wherein it has been held that the High Court in exercise of revisional jurisdiction cannot re-assess or re-evaluate the evidence for the purposes of recording a finding different than the one recorded by the Courts below merely

because it is inclined to take a different view. The only permissible area to test the order of the Rent Controller or the Appellate Authority is whether those orders are in accordance with law or proper. It has also been held that power of the High Court Under Section 15(5) of the Act does not extend to exercise all powers of an appellate forum. Therefore, there is no scope for interference in the concurrent findings recorded by both the Courts below.

9. It is well settled that a tenant is not qualified to challenge the family partition entered into between members of the family of the landlord. In the instant case, according to the family partition, the demised shop has fallen to the share of landlord-respondent and a decree dated 30.7.1997 on the basis of family partition was passed by the Additional Civil Judge (Sr. Division), Malerkotla. Such a family partition or a decree passed by the civil court could not be subjected to the provisions of Section 17 of the Registration Act, 1908 because it only settles the already existing rights. The judgment of the Supreme Court in Bhoop Singh's case (supra) would not be applicable because the family settlement merely allocates and settles the existing rights by way of mutual adjustment. In any case, the tenant-petitioner is a persona non grata.

10. The other argument concerning the shop which was subject matter of sale deed Ex. RW5/A sold by the landlord-respondent or that the landlord-respondent has been running a brick-kiln, has not impressed me because both the Courts have recorded findings against the tenant-petitioner. It has been held with regard to the sale of shop that the same in fact was not a commercial property and it was 10 marlas of land. The Courts below have placed reliance on the statement of the vendee who was produced by the landlord-respondent. Similarly, with regard to the business of brick-kiln started by the landlord-respondent, the Courts below have taken the view that it is not a permanent business as he has to carry on a small business to earn his livelihood which was of a seasonal nature. It is in these circumstances that it has to be held that the landlord-respondent is the best Judge of his necessity and need. Therefore, the argument raised on behalf of the tenant-petitioner do not merit acceptance and I have no hesitation to reject the same.

11. In view of the above, the instant petition is devoid of merit and does not deserve to be admitted the same is hereby dismissed.

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