

Sehdev Vs. Smt. Banti Devi

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Court : Punjab and Haryana

Decided On : Nov-21-2002

Reported in : (2003)133PLR348

Judge : V.M. Jain, J.

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

Appeal No. : Civil Revision No. 2517 of 1988

Appellant : Sehdev

Respondent : Smt. Banti Devi

Advocate for Def. : Rajesh Garg, Adv.

Advocate for Pet/Ap. : M.L. Sarin, Senior Adv. and; Sweena Pannu, Adv.

Disposition : Petition dismissed

Judgement :

V.M. Jain, J.

1. This revision petition has been filed by the tenant against the order passed by the Courts below, whereby Rent Controller had ordered ejectment of the petitioner tenant from the demised premises and the appeal filed by the tenant was

dismissed by the appellate authority.

2. Facts in brief are that Smt. Banti Devi (landlady) through her attorney Sehdev Arya filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 against another Sehdev (tenant), seeking his ejectment from the demised premises on the ground of non-payment of rent and that the landlady required the premises for her own use and occupation. It was alleged that previously the landlady was residing with her husband at Darjeeling and that her husband expired and she had no other house in the urban area concerned.

3. In the written reply filed by the tenant, the relationship of landlord and tenant was denied between the parties and it was alleged that in fact he was adopted as a son by one Mahadev Parshad. He denied that he ever took the house in question on rent. It was alleged that the landlady had earlier filed similar petition but the same was dismissed after framing of issues for want of evidence and that the present petition was barred. It was denied that the landlady was entitled to seek ejectment of the tenant on any of the grounds taken in the eviction petition. In the replication, landlady admitted dismissal of the previous petition but it was alleged that same was dismissed in default and not on merits. Various issues were framed.

4. After hearing both sides, learned Rent Controller found that there was relationship of landlord and tenant between the parties and that the tenant was liable to be evicted from the demised premises, on the ground of personal necessity of the landlady, as also on the ground of non-payment of rent. It was also found that the previous petition was dismissed under Order 9 Rule 3 CPC and as such filing of the present petition was not barred. Resultantly, ejectment petition was allowed and the tenant was ordered to be evicted from the demised premises. The appeal filed by Sehdev (tenant) was dismissed by the appellate authority, upholding the findings of the Rent Controller. Aggrieved against the same, tenant filed the present revision petition in this court.

5. I have heard the learned counsel for the parties and have gone through the record carefully.

6. Learned counsel for the petitioner tenant submitted before me that there was no relationship of landlord and tenant between the parties and as such the Rent Controller had no jurisdiction to order ejectment of the tenant petitioner from the demised premises. It was submitted that in fact the house in question was taken on rent by Sita Ram, natural father of present petitioner, Sehdev, and that Sita Ram was since dead. It was submitted that petitioner-Sehdev, was in fact adopted by Mahadev Parshad and that the present petition for ejectment against Sehdev petitioner was not maintainable. It was further submitted that ejectment petition against Sehdev, petitioner alone was not maintainable and should have been filed against all the legal heirs of Sita Ram. Reliance was placed on H.C. Pandey v. Sri. G.C. Paul, Judgments Today 1989(2) S.C. 261 and Textile Association (India) Bombay Unit v. Balmohan Gopal Kurup and Anr., (1990)4 Supreme Court Cases 700.

7. However, I find no force in these submissions of the learned counsel for the petitioner tenant. After discussing the entire evidence led by the parties, it was found by the Rent Controller that there was relationship of landlord and tenant between the parties. It was found that in fact, from the birth certificate, voters list, guarantee deed and application for ration card, it was proved that Sehdev, tenant was described as son of Sita Ram, in all the documents and that he had taken the plea of adoption merely to say that he had no links with Sita Ram (natural father) and that he was not residing with him. It was found that oral testimony of Sehdev, tenant, could not be relied upon, as he had told an apparent lie that no child was born in the house in dispute. As referred to above, this finding was given by the learned Rent Controller after discussing the entire oral and documentary evidence led by the parties, on the question regarding relationship of landlord and tenant between the parties. Besides considering the oral evidence of AW1 Sehdev Arya (attorney of Smt. Banti Devi, landlady), AW2 Dharam Chand, AW3 Dev Raj and AW4 R.K. Parihar, Accountant of the bank, who had proved from the documentary evidence that Sehdev, tenant had described himself as son of Sita Ram, in the guarantee deed, executed by him, Rent Controller had also considered the copy of the Sale deed Ex.P-2, vide which Smt. Banti Devi had purchased the house in question from Anant Dev in July 1977. Copies of Birth certificates, Exhibits P-3 and P-4, vide which a son and daughter were born to present petitioner Sehdev

(tenant) in the house in question on 24.7.1983 and 12.1.1985 and voters list Ex.P-5, showing that Sehdev tenant was residing in the house in question alongwith his father and others. Rent Controller hadalso considered the evidence of RW2 Sehdev, tenant and RW3 Sadhu Ram, besides considering the documentary evidence i.e. the pleadings in the previous litigation and the house tax assessment register. It was after considering the entire evidence led by the parties,,referred to above, that the learned Rent Controller found that there was relationship of landlord and tenant between the parties. This finding given by the Rent Controller was affirmed by the appellate authority in appeal.

8. Learned counsel appearing for the petitioner tenant could not point out any illegality or impropriety in the detailed 'judgment of the Rent Controller, who had decided issue No. 1 in favour of landlady and had found that there was relationship of landlord and tenant between the parties. The reasoning given by the learned Rent Controller, in coming to the aforesaid conclusion is based on evidence led by the parties. The oral testimony of RW2 Sehdev, tenant, that his father Sita Ram had taken the house in question on rent or that he (Sehdev) was adopted by Mahadev Parshad, in my opinion, would not be enough to prove these allegations in view of the documentary evidence available on the record to show that Sehdev tenant had been describing himself as son of Sita Ram in the various documents at various stages and that he was residing in the house in question. Merely because in the. house tax assessment register name of the occupier was mentioned as Sita Ram could not be taken as sufficient to hold that in fact Sita Ram had taken the house in question on rent in view of the overwhelming evidence led by Smt. Banti Devi, landlady that in fact the house in question was given on rent by her through Sehdev Arya, to the present petitioner, Sehdev, tenant, merely because the power of Attorney, in favour of Sehdev Arya was of a later date, by itself would be no ground to discard the evidence led by Smt. Banti Devi, in this regard.

9. In the present case since the present petitioner Sehdev was residing in the house in question as a tenant, Smt. Banti Devi had filed the ejectment petition only against Sehdev, tenant. That being so, ejectment petition could not be held to be incompetent if the other legal heirs of Sita Ram were not made parties in this

petition, especially when the premises were given on rent to Sehdev and not to Sita Ram. The two authorities relied upon by the learned counsel for the petitioner tenant, in my opinion, would have no application to the facts of the present case. In Judgments Today 1989(2) S.C. 261 (supra), it was held by the Hon'ble Supreme Court that the heirs of the deceased tenant succeed to the tenancy as joint tenants and not as tenants in common and that notice to quit under Section 106 of the Transfer of Property Act, served upon one of the heirs was valid. In my opinion, the law laid down in this authority would be of no help to the present petitioner. In (1990) 4 Supreme Court Cases 700 (supra), the suit for eviction was filed against the family members of deceased tenant without impleading one of the sons and the suit was decreed ex parte. Thereafter the said son of the tenant filed a suit that he being also a tenant, decree was not binding on him. The courts below found that he was as much a tenant as other members of the family of the deceased living in the premises and as such the decree for eviction obtained against other members of the family without impleading him as a party was liable to be set aside. It was held that the decree was not binding upon him. In my opinion, the law laid down in this authority also would be of no help to the petitioner tenant in this case. As referred to above, in the present case, it stands proved on the record that the house in question was given on rent to present petitioner Sehdev and not to his father Sita Ram and that Sehdev was residing in the said house alongwith his family.

10. In view of my detailed discussion above, I uphold the findings of the Rent Controller on issue No. 1 and hold that there was relationship of landlord and tenant between the parties.

11. Regarding the grounds of ejectment taken by the landlady, no arguments were addressed before me by the learned counsel for the petitioner tenant, during the course of arguments. Even in the detailed grounds of revision, the challenge was only with regard to the finding on issue No. 1. With regard to the other issues including grounds of ejectment covered by issue No. 2, it was only stated that the findings of the courts below on issues No. 2 to 5 were illegal and liable to be reversed and that the authorities had erred in passing order of ejectment on the ground of non-payment of rent and personal necessity. However, detailed grounds

were not given in the grounds of revision as to how the findings of the courts below of issue No. 2 were liable to be set aside.

12. Even otherwise, finding regarding personal necessity is a finding of fact based on evidence and does not call for interference by this Court in exercise of its revisional jurisdiction. Reliance in this regard may be placed on the law laid down by the Hon'ble Supreme Court in the case reported as Vaneet Jain v. Jagjit Singh, (2000-3)126 P.L.R, 263 (S.C.). For the reasons recorded above, finding no merit in this revision petition the same is hereby dismissed with no order as to costs. However, petitioner tenant is allowed two months time to vacate the demised premises.

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