

Madan Gopal Vs. Sheela Devi

Madan Gopal Vs. Sheela Devi

SooperKanoon Citation : sooperkanoon.com/632834

Court : Punjab and Haryana

Decided On : Aug-24-1999

Reported in : (1999)123PLR661

Judge : V.S. Aggarwal, J.

Acts : Haryana Urban (Control of Rent and Eviction) Act, 1973 - Sections 13(3) and 15(6)

Appeal No. : Civil Revision No. 2456 of 1989

Appellant : Madan Gopal

Respondent : Sheela Devi

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

Advocate for Pet/Ap. : Anil Khetarpal, Adv.

Disposition : Petition dismissed

Judgement :

V.S. Aggarwal, J.

1. The present revision petition has been filed by Madan Gopal, hereinafter described as 'the petitioner' directed against the order passed by the learned Rent Controller, Kurukshetra, dated 30.10.1987. The learned Rent Controller passed an

order of eviction against the petitioner. The petitioner preferred an appeal which was dismissed by the learned Appellate Authority on 29.7.1989. Hence, the present revision petition.

2. The relevant facts are that the respondent claimed eviction of the petitioner with respect to the property in question at Kurukshetra. It had been let to the petitioner for running of a rice sheller. The ground of eviction pressed was that the property in question has become unfit and unsafe for human habitation. The roof of two rooms had fallen and the remaining building is in dangerous condition.

3. In the reply filed, the petitioner-tenant did not dispute the relationship of landlord and tenant between the parties but urged that the property in question has not become unfit and unsafe for human habitation.

4. The learned Rent Controller after framing of issues concluded that the suit property has become unsafe and unfit for human habitation. The said finding was approved by the learned Appellate Authority.

5. On behalf of the respondent, preliminary objection was taken that the learned Rent Controller and the learned Appellate Authority have appreciated the fact and concluded that the property in question has become unsafe and unfit for human habitation. The said finding of fact requires no interference. This contention of the respondent's counsel is meritorious and cannot be ignored. When the findings are arrived at by the authorities and are based on evidence, the said findings cannot be reappreciated in revision. These could only be interfered if the findings are absurd and totally illogical.

6. With this backdrop, one can refer to the material placed on the record. The respondent had examined Sh. K.N. Singal, a building expert. The relevant portion of this report Exhibit PZ read as under:-

'The whole building is a single storey. Shri Madan Gopal tenant son of Shri Mohan Dass has been running his business (Sheller-Godowns etc) in this building. The building appears to be more than thirty years old. The building is divided into three portions for report purposes:- A. Portion of the building in use for Rice Godown,

Office and Chowkidar Room.

B. Portion where sheller machine has been installed.

C. Portion of the building in use for storage of paddy husk, drying of paddy and store.

Portion A

Office and Chowkidar rooms are single storey. Walls are built with kiln-bricks in mud mortar. The roof is laid on wooden beams which consist of wooden battens, a layer of wooden phatties, layer of bricks laid dry and covered with earth, and top finished with mud plaster. More than 25% of the wooden battens in the roof of the office as well as of Chowkidar room have been downward, varying from 2' to 3' in the centre. At places the bricks in the walls of the chowkidar room have withered away. The floor is uneven and broken at places. The walls are white washed.

The roof of the Godown is laid on wooden beams and Rs. S. Joints supported by bricks masonry pillars made with kiln bricks in mud mortar. The roof consists of wooden battens, wooden phattis, layer of bricks laid dry, earth, and the top finished with mud-plaster. The wooden battens used in roof have bent downward / at places considerably to the extent of 2' to 3' in the centre. The ceiling side of the roof of godowns clearly shows that the roof has been repaired at six places. The battens have been changed.

The floor of this portion is covered with a layer of paddy husk 2' to 3' thick to conceal the floor condition though at places it was found damaged and uneven.

(B) The portion marked as 'B' is in use for filling the rice in gunny bags. In this portion sheller machine has been installed. The roof of this portion is laid at a height of about 25-26 ft. The roof consists of wooden trusses, wooden purlins and rafters covered with CGI sheets. The wooden purlins and rafters over which the roof is laid have bent downward while the trusses are unaffected. The floor is uneven. The walls are made with kiln bricks partly in cement mortar and partly in mud mortar.

(C) The portion marked C is in use for storing paddy husk, drying of paddy. There are two rooms and one shed in the south-west corner of this portion. The walls of these rooms are made with kiln bricks in mud mortar. The roof of both the rooms is laid on wooden beams which consist of wooden battens and wooden phatties layer of bricks laid dry and top finished with layer of earth and mud plaster.

The roof of the Verandah in front of room No.1 has fallen down and is now covered by CGI sheets. The roof of room No. 1 has been repaired by replacing 6 No. wooden battens. The battens of room No. 2 have bent downward. Walls are in deteriorated condition. Shed by the side of room No. 2 is filled with old discarded and junk materials. Room No. 1 and 2 are in dilapidated condition. Cracks are visible in the walls. Termite is also seen on the walls. The mud mortar used in the construction of walls has almost become 'reh' as such has lost its adhesive strength. Bricks used in the walls have partly withered.

Entrance Gates:

There are two gates opening towards Subhash Street, Gate No. 1 is in proper condition made with CGI sheets. Gate No. 2 which is made of CGI sheets is not in working order. CGI sheets are damaged at joints. It is kept closed.

Compound Wall

Compound Wall is made of kiln bricks in mud mortar, its height is 10', from the bottom upto a height of 3 to 4 feet most of the bricks in the compound wall have withered away being second class or Pilla and have lost their strength.

In my opinion the entire structure in the present state is unsafe, uninhabitable and as a whole has lived its life. The structure can give way at any time.'

7. This report has been accepted by the authorities, namely, the learned Rent Controller and the learned Appellate Authority. Two of the rooms had completely fallen and it further shows that the condition of the other portion was also dangerous. The roof of the verandah in front of one room had fallen and was covered with CGI sheets. The cracks were visible on the walls. The report of the building expert, in this circumstances, was rightly rejected to be not based on

correct facts. When such was the situation, there was no escape but to conclude that the property in question had become unsafe and unfit for human habitation.

8. On behalf of the petitioner, it was urged that permission had been obtained to repair the building and, therefore, it cannot be termed that it has become unfit and unsafe for human habitation. Taking the plea of the learned counsel at its best if permission is granted to repair, it does not mean reconstruction. If a ground of eviction has become available, in that event, it cannot be effected or defeated by any such act of the tenant. In fact, two rooms had already fallen and it shows that the building has become unfit and unsafe for human habitation.

9. In that event, it was urged that earlier a petition for eviction was filed. It was allowed to be dismissed in default. Thereafter, a rent note was executed and the rent was increased. On these facts, it was contended that second petition on the same cause will not be maintainable.

10. Even on this score, the contention of the learned counsel must fail. The earlier petition for eviction is not shown to have been dismissed under Order 9 Rule 8 of the Code of Civil Procedure. Thus, the second eviction petition would be maintainable and furthermore if rent had been increased, it does not imply that the ground of eviction that had become available would come to an end. There is nothing to indicate that the said fact had ever been considered when the rent was increased. In these circumstances, the learned Rent Controller and the learned Appellate Authority rightly held that the petitioner was liable to be evicted. There is nothing to interfere.

11. For these reasons, the revision petition must fail and is accordingly dismissed.

12. The petitioner is granted three months time to vacate the premises.