

Ranjit Kumar Vs. Brij Bhushan

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Court : Punjab and Haryana

Decided On : Oct-29-2003

Reported in : (2004)137PLR716

Judge : H.S. Bedi, J.

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

Appeal No. : Civil Revision No. 2268 of 1997

Appellant : Ranjit Kumar

Respondent : Brij Bhushan

Advocate for Def. : V.K. Jindal, Adv.

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

Disposition : Petition dismissed

Judgement :

H.S. Bedi, J.

1. This is a tenant's petition. It arises out of the following facts:
2. Brij Bhushan claiming himself to be the landlord of House No. 701, Main Bazar, Naraingarh, filed an application against Bishna Ram (since deceased) now

represented by his legal heirs, seeking their ejectment on the ground that the rent of the demised premises from 1.8.1982 to 30.9.1988 had not been paid to him, that material additions/alterations had been made thereto and that the premises had also become unfit and unsafe for human habitation.

3. In the written statement filed by the tenants, the relationship of landlord and tenant was denied and it was pleaded that the premises had never been taken on rent. Several other pleas were also taken.

4. On the pleadings of the parties, the following issues were framed: -

1. Whether the petitioner is owner and landlord and the respondent is a tenant in the disputed premises at a monthly rent of Rs. 50/-? OPP

2. Whether the respondent is liable to be ejected from the premises in dispute on the grounds mentioned in the petition? OPP

3. Whether the property in dispute bears No. 701 and the same is part of Khasra No. 701 as alleged in the petition? OPP

4. Whether the petitioner has no locus standi to file the present petition? OPR

5. Whether this court has no jurisdiction to try and entertain the present petition? OPR

6. Whether the present petition is not maintainable in its present form? OPR

7. Whether the present petition is false and frivolous and liable to be dismissed with special costs? OPR

8. Relief.

5. The Rent Controller in Para 7 of his order dated 29.7.1995 held as under.-

'First of all no rent note has been produced on the record. There is no evidence as to what property was given on rent. There is also no evidence as to when the property was given on rent. I am of the considered view that Joginder Singh AW2, who has deposed that the tenancy was created in his presence is not a truthful

witness. He has not been able to tell the parentage of the respondent. There being no rent note or any other evidence of tenancy, I hereby hold that the petitioner has failed to establish the relationship of landlord and tenant between the parties. As such, I find this issue in favour of the respondent and against the petitioner.'

6. The application filed by the landlord was accordingly dismissed. The matter was thereafter taken up in appeal by the landlord and the Appellate Authority vide his order dated 25.4.1997 reversed the finding of the Rent Controller by observing that as per the case of the landlord himself, the property which had earlier been a joint one of Asha Ram, Muni Lal, Nand Kishore and Banarsi Dass, (who had all since died) had been divided amongst themselves prior to their deaths, Brij Bhushan, who was the son of Nand Kishore, had become the owner of the property in place of his father and as such was entitled to claim rent from the tenant. To hold that the tenant in fact was occupying the property, the appellate authority placed reliance on the evidence of RW-3 Mangat Ram and AW-3 Mohan Lal, a clerk in the office of the Municipal Committee, who had brought the record pertaining to house No. 701 allegedly owned by Brij Bhushan and occupied by tenant Bishna Ram. The Appellate Authority further observed that it was clear from the statement of Ranjit Kumar, who appeared as RW-5, that the rent from 1.1.1986 to 30.9,1988 had not been paid. The receipts Exh.R-2, Exh.R-3, Mark R-1 and to R-9 were ignored by the Appellate Authority on the ground that the same pertained to a period period to 1984. The ejectment of the tenant (the petitioner herein) was accordingly ordered..

7. Mr. Anil Kheterpal, the learned counsel appearing for the petitioner, has argued that the orders of the Appellate Authority suffered from a clear misreading of the evidence of Mohal Lal (AW-3) and Mangat Ram (RW-3) and as such could not be sustained. He has pointed out that Mohan Lal had brought the notification, Exh.PW-3/A issued by the Municipal Committee but he had not stated that property No. 701 was owned by Brij Bhushan. He has also urged that from the statement of Mangat Ram (RW-3), it was also clear that he had not stated that the property which was joint had been partitioned between Asha Ram, Banarsi Dass, Muni Lal and Nand Kishore and as such this finding too was erroneous.

8. Mr. V.K. Jindal, the learned counsel appearing for the respondent, has, however, supported the judgment of the learned Appellate Authority.

9. I have considered the arguments of the learned counsel for the parties and have gone through the record.

10. As would be evident, the main issue be as to whether Brij Bhushan was the landlord of the demised premises. Admittedly, there is no rent note on the record. In the light of the fact that there has been gross-misreading of the evidence of Mohan Lal (AW-3) and Mangat Ram (RW-3) with regard to the details furnished by them, I am of the opinion that for the reasons that follow, the order of the Appellate Authority cannot be sustained.

11. It is clear that Mohan Lal (AW-3) while producing the notification, Exh.PW-3/A, did not state that the property in dispute was numbered as property No. 701 and he only stated that property No. 701 was owned by Brij Bhushan and it was his self occupied property. The inference drawn by the Appellate Authority on Exh.PW-3/A, to the effect that Bishna Ram was a tenant under Brij Bhushan is, therefore, clearly erroneous. Likewise, it bears highlighting that Mangat Ram (RW-3) did not state in his cross-examination (as found by the Appellate Authority) that the joint property had been partitioned between Asha Ram, Banarsi Dass and Muni Lal, who had since died. It is also clear that in this situation if Brij Bhushan claimed to be the landlord of the property, he ought to have impleaded all the co-sharers either as petitioners or respondents. Admittedly, this has not been done. In this view of the matter, even if it is proved that Ranjit Kumar, (RW5) had stated that no rent had been paid from 1.1.1986 to 30.9.1988, this would not entitle the Brij Bhushan to alone claim the arrears of rent for that period. In this view of matter, no other point arises for consideration.

12. For the reasons given above, the revision petition is allowed, the order of the Appellate Authority is set aside and the ejectment application is dismissed.