
Before V.S. Aggarwal, J.

INDER KUMAR JOHAR,—*Petitioner.*

versus

KAILASH DEVI,—*Respondent.*

C.R. 5014 of 1997

28th May, 1998

East Punjab Urban Rent Restriction Act, 1949—S. 13—Transfer of Property Act, 1953—S. 53-A—Eviction on ground of non-payment—Part performance—Petitioner-tenant entered into an agreement of sale of demised premises with landlord—Agreement stipulated that petitioner who is a tenant will become owner on completion of sale deed—Contention that petitioner could not be evicted as he was in possession as part performance of agreement to sell and relationship of tenant and landlord ceased to exist—Appellate authority rejected contention—Order upheld—Nothing to show that the petitioner had done anything which could indicate status as tenant had ceased—Petitioner cannot take advantage of S. 53-A of the Transfer of Property Act.

Held, that it is not disputed that in pursuance of agreement of sale which the petitioner relies upon, it was stipulated that petitioner is a tenant and is in possession. As an owner purchaser possession will be given at the time of sale deed. In other words, he continued to be a tenant therein. There is nothing to show that the petitioner had done anything which could indicate that his status as a tenant has ceased. In these circumstances, the petitioner could not take advantage of Section 53-A of the Transfer of Property Act.

(Para 5)

Gurcharan Das, Advocate, *for the Petitioner.*

Kuldip Sanwal, Advocate, *for the Respondent.*

JUDGMENT

V.S. Aggarwal, J.

(1) The present revision petition has been filed by Inder Kumar Johar (hereinafter described as 'the petitioner') directed against the order of the learned Rent Controller, Ludhiana dated 16th October, 1996 and that of the Appellate Authority. Ludhiana

dated 9th August, 1997. By virtue of the impugned order, the learned Rent Controller had passed an order of eviction against the petitioner and his appeal was dismissed by the learned Appellate Authority. The short question agitated has been as to whether when there is an agreement of sale between the landlord and the tenant, in that event, Section 53-A of the Transfer of Property Act would come to the rescue of the petitioner-tenant or not ?

(2) Some of the relevant facts are that respondent filed a petition for eviction against the petitioner alleging that he is a tenant in the suit premises at a monthly rent of Rs. 600 P.M. including the house tax if levied. The petitioner is stated to be in arrears of rent from 1st January, 1989. The petition for eviction was contested. The petitioner denied the relationship of landlord and tenant between the parties alleging that the respondent has already entered with the petitioner into an agreement of sale dated 17th September, 1991. The respondent has failed to execute the sale deed. She could not produce her title deeds. The petitioner is ready and willing to perform his part of the contract. The rent is stated to be Rs. 110 P.M. besides house tax.

(3) The learned Rent Controller had framed the issues. It was held that there is a relationship of landlord and tenant between the parties and further that arrears of rent claimed were due. The tender of rent made by the petitioner was stated to be short because the findings returned were that agreed rent was Rs. 600 P.M. An order of eviction was passed. Before the Appellate Authority, the question agitated was that petitioner was in possession of the suit premises in part performance of the contract of sale. Therefore, he could not be evicted from the suit property. As such, the Appellate Authority rejected the said contention holding that the agreement of sale clearly stipulates that petitioner is a tenant in the property and possession as owner shall be given only at the time of sale. As yet no sale deed has been executed. Therefore, the contention of the learned counsel for the petitioner was rejected. Aggrieved by the dismissal of the appeal, the present revision petition has been filed.

(4) There is no controversy that a civil suit has already been filed by the petitioner on basis of the alleged agreement of sale for specific performance of the contract. The same is pending.

Section 53-A of the Transfer of Property Act reads :—

“53A. Part performance.—Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty.

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract :

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

It is well known that this doctrine of Section 53A of the Transfer of Property Act is an equitable doctrine. The object of the said provision is to prevent a transferor or his successor-in-interest from taking possession than on account of non-registration of the document provided the transferee has performed his part of the contract. However, the basic ingredients must be satisfied that it should be contract to transfer immovable property. The contract must be for consideration. It must be in writing signed by or on behalf of the transferor. The terms can be ascertained from the said written agreement. The transferee should have taken

possession or should have already been in possession. He should be willing to perform his part of the contract or that he must have done some act in furtherance of the contract. This question had been considered by the Gauhati High Court in the case of *Supil Kr. Sarkar (deceased by L.R's.) and others v. Aghor Kr. Basu (deceased by L.R's.) and others*, (1). In this regard the scope of Section 53A of the Transfer of Property Act was considered and in paragraph 9 it was held:—

“Whether a tenant continuing in possessing after a contract to transfer written and signed by the landlord is protected by or under S. 53A? The pre-requisites for invoking the equitable doctrine of part performance are : (a) that there must be a contract to transfer for consideration immovable property in writing signed by the person sought to be bound by it and from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty; (b) that it must be shown that the transferee has, in part performance of the contract, either taken possession of the property or any part thereof, or the transferee being, already in possession, continues in possession and has done some act in furtherance of the contract; and (c) that the transferee has performed or is willing to perform his part of the contract.”

Pertaining to a tenant who is claiming himself to be in possession in part performance of the contract, the Court went on to hold and concluded:—

“Therefore, the tenant must show either from the contract or some other material or evidence that he continued to possess the property not in the capacity as a tenant, for example, he does not pay the rents under one of the terms of contract to sale in order to show that his possession is not in the capacity as a tenant, but in part-performance of the contract. In addition to it, the tenant has to show that he has done some act in furtherance of the contract, such as payment of necessary taxes to show that he was liable to pay the taxes as his possession

(1) AIR 1989 Gauhati 39

was no longer as that of a tenant. Therefore, if a tenant has been in possession in his capacity as a tenant and not in part-performance of the contract, he cannot take the plea of protection under S. 53A.”

Same opinion in this regard even was expressed by a learned Single Judge of this Court in the case of *Bhaiya Ram v. Mahavir Parshad*(2). At the out set it must be mentioned that a reference was made to a Full Bench but the findings hereto referred were not a part of the reference that was made. It was found that Bhaiya Ram was already in possession when agreement of sale was executed. Bhaiya Ram never stated that he is ceased to be a tenant. There was no evidence to show that after the agreement, he did anything to show his status as tenant has ceased. It was held that Bhaiya Ram failed to prove that he continued in possession of the house in part performance of the agreement.

(5) The Himachal Pradesh High Court in the case of *Gursaran v. Shakuntala*(3) while dealing with a similar situation held that where landlord has not given proprietary possession to the tenant, in that event tenant is not saved by provisions of Section 53A of the Transfer of Property Act. It was held :—

“Moreover terms of agreement, as detailed above, nowhere could lead to the inference that tenancy of Gursaran stood extinguished, but on the other hand the only inference in view of this term and previous litigation could be that tenancy was to continue and it could be terminated or eviction could be there in due course of law, especially when injunction suit was dismissed and the present landlords claim that they have become owners of the Hosue No. 114 by way of the sale in their favour, was not disturbed at all.”

The position is clear. It is not disputed that in pursuance of agreement of sale which the petitioner relies upon, it was stipulated that petitioner is a tenant and is in possession. As an owner-purchaser possession will be given at the time of sale deed. In other

(2) 1968 Current Law Journal 947

(3) 1996 (2) RCR 102

words, he continued to be a tenant therein. There is nothing to show that the petitioner had done anything which could indicate that his status as a tenant has ceased. In these circumstances, the petitioner could not take advantage of Section 53A of the Transfer of Property Act.

(6) No other argument was advanced.

(7) For these reasons, the revision petition must fail and is dismissed.

J.S.T.