

Before G.S. Sandhawalia, J.

SATNAM SINGH — *Petitioner*

versus

BABU SINGH AND OTHERS — *Respondents*

CR No. 3129 of 2016

February 09, 2017

East Punjab Urban Rent Restriction Act, 1949 — Ss.2(c) & 13 — Code of Civil Procedure — O.1 Rl.10 — Petitioner/landlord filed petition for ejection — Respondents No.1 & 2 filed application u/o 1 Rule 10 CPC for impleading them as party on the ground that they were owners of property which was mortgaged to petitioner/Satnam Singh — Separate suit had been filed seeking redemption and possession — Rent Controller allowed the application under O.1 Rl.10 CPC — Petitioner challenged the impugned order — Civil Revision allowed — Impugned order passed by Rent Controller set-aside as dispute of ownership is to be decided by Civil Court and third-party claiming ownership in rent proceedings is not a necessary party.

Held, that it is settled principle that the dispute before the Rent Controller is qua only the landlord and tenant and he unnecessarily need not be the owner of the property. As noticed the specific averment was made that the property was leased out in the year 2007 and the application was filed for eviction on 04.09.2013. The litigation qua the title is already pending in the civil proceedings and the same as such would have no immediate bearing on the fact that under the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') the landlord is a person who is entitled to receive the rent under Section 2 (c) of the Act which reads as under:-

"Section 2(c). 'landlord' means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who subjects any building or rented land in the manner hereinafter authorised, and, every person from time to time deriving title under a landlord;"

The Apex Court in '***K.D. Dewan Vs. Harbhajan Singh***

Parihar' 2002 (1) RCR (Rent) 214 has held that it is not necessary for the landlord to be the owner of the property.

(Para 9, 10 & 11)

Further held, that counsel for the petitioner is well justified by placing reliance upon '***Ram Parkash Vs. Amar Nath and another' 1985 (1) RCR (Rent) 21*** wherein it has been held that where the dispute of ownership was raised by the brother of the vendor, he could seek remedy in civil Court for his ownership and could file a separate application of ejectment and his application under Order 1 Rule 10 CPC was dismissed, while allowing the civil revision.

(Para 12)

Further held, that in similar circumstances this Court in '***Subhash Chander and others Vs. Lala Baij Nath Aggarwal and others' 1993 (2) PLR 460*** and in '***Kamla Devi and others Vs. Surinder Kumar and others' 2006 (3) PLR 371*** has also held to that extent that normally the plaintiff is the master of his suit. It has been categorically held that the third party claiming ownership in the suit property is not a necessary party in the rent proceedings.

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Varun Garg, Advocate
for the petitioner.

Amrik Singh, Advocate
for respondent No.1.

G.S. SANDHAWALIA, J. oral

(1) The present petition has been filed by the landlord who is aggrieved against the order dated 22.01.2016, whereby the Rent Controller, Kharar has allowed the application for impleadment under Order 1 Rule 10 CPC of respondents No.2 and 3.

(2) The reasoning given in the impugned order is that the said respondent-applicant were owners of the property which was mortgaged to the petitioner Satnam Singh vide mortgaged deed dated 20.04.1999. Since a separate suit had been filed seeking redemption and possession of the suit property, the applicants were necessary party in the case and they would suffer irreparable loss and, therefore, the case could not be decided effectively without their presence. Resultantly, the petitioner was directed to filed amended petition and respondents were directed to file reply to the amended petition.

(3) The said order on the face of it is not sustainable. In the eviction petition which was filed on 04.09.2013 it was specifically pleaded that the petitioner had given the shop in question on rent in the year 2007 to respondent No.3, namely, Lakhvir Singh and the rate of rent was Rs. 2,800/- per month. The eviction had been sought on various grounds including arrears of rent and that the shop was being used for the purpose other than it was leased out and there was a nuisance by the tenant.

(4) The application, thereafter, came on behalf of the respondents No.1 and 2 seeking the impleadment taking the plea of ownership and mortgage and the fact that the civil suit filed for permanent injunction has been filed by the tenant and the suit for redemption had been concealed.

(5) The said application was contested on the ground that respondent No.1-Babu Singh had offered to sell to the petitioner the property in dispute and he had fraudulently prepared a transaction of mortgage. Possession as such has been delivered to the petitioner since 1999 and the petitioner had been dealing with the same as a owner. The tenant was in possession as per on his account and the challenge has also been raised to the mortgage deed and the sale deed, which was subject matter of the counter claim in the civil suit.

(6) It was specifically pleaded that the applicants were in collusion against the petitioner and had been brought forward by Lakhvir Singh, the tenant to start the agitation for the suit property by involving Babu Singh respondent No.1. The petition in question dealt only with the relationship of landlord and the tenant, which was only between the petitioner and respondent No.3 and, therefore, the applicants were totally strangers who were arrayed as a party to assist the tenant to delay the proceedings.

(7) Counsel for the petitioner has accordingly submitted that in view of the stand taken, the order passed was not justified and was liable to be set aside.

(8) Counsel for the respondent on the other hand has defended the said order and submitted that in view of the fact that the ownership title is with Kuldeep Singh-respondent No.2 on 29.10.2012 and there was a mortgage deed earlier dated 20.04.1999 by Babu Singh which had given the possession to the present petitioner, therefore, they were necessary parties.

(9) The said argument cannot be accepted. It is settled principle

that the dispute before the Rent Controller is qua only the landlord and tenant and he unnecessarily need not be the owner of the property.

(10) As noticed the specific averment was made that the property was leased out in the year 2007 and the application was filed for eviction on 04.09.2013. The litigation qua the title is already pending in the civil proceedings and the same as such would have no immediate bearing on the fact that under the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') the landlord is a person who is entitled to receive the rent under Section 2 (c) of the Act which reads as under:-

"Section 2(c). 'landlord' means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who subjects any building or rented land in the manner hereinafter authorised, and, every person from time to time deriving title under a landlord;"

(11) The Apex Court in *K.D. Dewan* versus *Harbhajan Singh Parihar*¹ has held that it is not necessary for the landlord to be owner of the property and the observations read as under:-

“7. A perusal of the provision, quoted above, shows that the following categories of persons fall within the meaning of landlord : (1) any person for the time being entitled to receive rent in respect of any building or rented land; (2) a trustee, guardian, receiver, executor or administrator for any other person; (3) a tenant who sublets any building or rented land in the manner authorised under the Act and (4) every person from time to time deriving title under a landlord. Among these four categories of persons, brought within the meaning of 'landlord', Mr. Sharma sought to derive support from the last category. Even so that category refers to a person who derives his title under a landlord and not under an owner of a premises. For purposes of the said category the transferor of the title referred to therein must fall under any of the categories (1) to (3). To be a landlord within the meaning of clause (c) of section 2 a person need not necessarily be the owner; in a vast majority of case an owner will be a landlord but in many cases a person other than an

¹ 2002 (1) RCR (Rent) 214

owner may be as well be a landlord. It may be that in a given case the landlord is also an owner but a landlord under the Act need not be the owner. It may be noted that for purposes of the Act the legislature has made a distinction between an owner of a premises and a landlord. The Act deals with the rights and obligations of a landlord only as defined therein. Ownership of a premises is immaterial for purposes of the Act.

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14. From the above discussion it follows that such a truncated meaning of the term 'landlord' cannot be imported in clause (c) of section 2 of the Act having regard to the width of the language employed therein and there is no other provision in the Act to restrict its meaning for purposes of Section 13(3)(a) thereof to an owner of the premises alone. The appellant has been paying monthly rent of the premises to the respondent from 1976. The respondent is thus the landlord of the premises under the Act and is entitled to seek relief under Section 13(3)(a) of the Act. In this view of the matter, we find no illegality in the order of his High Court under challenge. The appeal is without merit and it is liable to be dismissed."

(12) Counsel for the petitioner is well justified by placing reliance upon *Ram Parkash* versus *Amar Nath and another*² wherein it has been held that where the dispute of ownership was raised by the brother of the vendor, he could seek remedy in civil Court for his ownership and could file a separate application of ejectment and his application under Order 1 Rule 10 CPC was dismissed, while allowing the civil revision.

(13) In similar circumstances this Court in *Subhash Chander and others* versus *Lala Baij Nath Aggarwal and others*³ and in *Kamla Devi and others* versus *Surinder Kumar and others*⁴ has also held to that extent that normally the plaintiff is the master of his suit. It has been categorically held that the third party claiming ownership in the suit property is not a necessary party in the rent proceedings.

² 1985 (1) RCR (Rent) 21

³ 1993 (2) PLR 460

⁴ 2006 (3) PLR 371

(14) Resultantly, keeping in view the above settled position, this Court is of the opinion that the order passed by the Rent Controller is not justified in the facts and circumstances. Accordingly, the present revision petition is allowed and the impugned order dated 22.01.2016 is set aside.

A. Jain