

SUNEET TAYAL v. RANJEESH CHAUHAN,(2022-1)205 PLR 378 , 2022 PLRonline 8953

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Anil Kshetarpal.

SUNEET TAYAL – Petitioner,

versus

RANJEESH CHAUHAN – Respondent.

Civil Revision No. 4867 of 2019, 1847, 2163 of 2021 (O&M)

(i) Co-owner - Is entitled to seek eviction of the tenant on behalf of the other co-owners - Moreover, the relationship of the landlord and tenant is not necessarily dependent upon ownership. [Para 12]

(ii) Execution - Admitted that as of now, there is no declaration in his favour, as regards any right, title or interest in any part of the suit property. Mere pendency of a regular second appeal does not entitle to become a party in the execution petition which has arisen from an order of to of eviction. [Para 9]

Mr. Amit Jhanji, Senior Advocate with Ms. Priyanka Kansal, for the petitioner (In CR-4867-2019) and for respondent No.1 in CR-1847-2021 and CR-2163-2021. Mr. Sukhbir Singh Mattewal, for the petitioner in CR-1847-2021. Mr. Paramjit Singh Thiara and Mr. A.S.Virk, for the petitioner in CR-2163-2021 and the applicant in CM-8292-CII-2021 in CR-4867-2019. Mr. Gagandeep Singh Sirphikhi, for the respondent in CR-4867-2019.

Anil Kshetarpal, J. - (27th October, 2021) -

1. Through this order, Civil Revision No.4867 of 2019 and 1847 and 2163 of 2021 shall stand disposed of.

2. In Civil Revision No. 4867 of 2019, Mrs. Suneet Tayal is the petitioner-landlady. She had filed a petition seeking eviction of the respondent-Rajneesh Chauhan from the tenanted premises on the ground of non-payment of rent. The Rent Controller, vide judgment dated 04.04.2018, ordered eviction of the respondent-Rajneesh Chauhan. Sh. Rajneesh Chauhan filed an appeal against the order of eviction passed by the Rent Controller. During the pendency of the appeal, he was granted an interim stay subject to the condition that he shall deposit the arrears of rent w.e.f. February 2009 till 04.04.2018 and mesne profits as assessed w.e.f. 04.04.2018 within a period of two months from the date of order. The tenant was directed to pay mesne profits at the rate of ₹25,000/- per month. The

respondent-Rajneesh Chauhan filed a Civil Revision No. 6311 of 2018 in the High Court assailing the aforesaid order. The High Court, vide an interim order dated 28.09.2018, directed Rajneesh Chauhan to regularly deposit a sum of 20,000/- per month. The tenant did not pay the aforesaid amount. ₹ He filed a Special Leave Petition before the Hon'ble Supreme Court which was disposed of vide an order dated 21.01.2019 by extending the period for deposit of the amount as per the High Court order. He has admittedly withdrawn the aforesaid Civil Revision No. 6311 of 2018.

3. Thus, there is no order granting an interim protection to the tenant. He has neither paid the rent as assessed by the Rent Controller nor deposited the mesne profits as directed by the Appellate Authority.

4. The landlady has filed the execution petition. The Executing Court has refused to issue the warrants of possession of the tenanted premises on the ground that in a separate litigation between the various other persons, the High Court has ordered the parties to maintain status quo. The order has been passed in Regular Second Appeal No. 5868 of 2018 filed by Amandeep Singh and Osheen. It is not in dispute that the tenant i.e. Rajneesh Chauhan is not the party in the aforesaid litigation. Certainly, the Executing Court has erred in refusing to issue the warrants of possession by misinterpreting the order(s) passed by the High Court in Regular Second Appeal No. 5868 of 2018. It is also not in dispute that as per the decree passed by the Courts, the landlady i.e. Mrs. Suneet Tayal is the owner to the extent of 1/3rd share. She being the landlady is entitled to execute the eviction decree in her favour and against Sh. Rajneesh Chauhan particularly when the possession of Mrs. Suneet Tayal is through her tenant-Sh. Rajneesh Chauhan. The order passed by the High Court on 12.03.2019 in Civil Misc. No. 16234-C of 2018 in Regular Second Appeal No. 5868 of 2018 is extracted as under:-

“Learned counsel for the appellants inter alia contends that a reading of the Will would reflect that the wish of late Sh. H.S. Ahluwalia was that in case he died then his half share in the house would pass on to his wife late Smt. Rajinder Ahluwalia and at the same time he had specified that the ground floor shall be registered in the name of his grand son Amandeep Singh and the 1st and 2nd floor of the house would be registered and possession handed over to his grand daughter. Reliance in this regard has been placed on Section 88 of the Indian Successions Act, 1925 wherein it is stated that “Where two clauses of gift in a Will are irreconcilable so that they can not peacefully stand together the last shall prevail”. Meaning thereby as per Section 88 of the Act the property has to be registered in the name of the appellants after they got married.

Notice of motion for 13.08.2019.

Issue notice in the application filed under Section 5 of the Limitation Act seeking condonation of delay of 178 days in filing the present appeal.

In the meantime, both the parties are directed to maintain status quo regarding possession as it exists today”.

5. This interim order has been passed only in order to protect the parties to the aforesaid

regular second appeal. This order cannot enure for the benefit of the respondent/tenant i.e. Sh.Rajneesh Chauhan, who is admittedly not a party to the aforesaid litigation. Sh. Rajneesh Chauhan is in possession of the property under Mrs. Suneet Tayal. Therefore, Mrs. Suneet Tayal is deemed to be in the constructive possession of the property through her tenant-Rajneesh Chauhan.

6. Furthermore, the respondent has no equity in his favour. He has neither paid the rent nor deposited the amount of mesne profits as directed by the Appellate Authority.

7. Keeping in view the aforesaid facts, the Executing Court has clearly erred in refusing to issue the warrants of possession vide an order dated 25.07.2019. In order to give another opportunity to the tenant, the learned counsel representing the tenant was requested to take instructions as to whether the tenant is now prepared to deposit the amount. Mr. Gagandeep Singh Sirphikhi, Advocate, after seeking instructions, has stated that the tenant is not prepared to deposit any amount.

8. Keeping in view the aforesaid facts, the order dated 25.07.2019 is set aside and the Executing Court is directed to proceed with the execution petition.

9. There are two more revision petitions filed by the persons who claim to have a right, title or interest in the property. Civil Revision No. 1847 of 2021 has been filed by Sh.Amandeep Singh who has filed the Regular Second Appeal No. 5868 of 2018 as well. He has filed an application before the Executing Court for his impleadment in the execution petition. The Executing Court has dismissed the same on the ground that the petitioner-Sh.Amandeep Singh is not a party to the rent proceedings. The learned counsel representing Sh.Amandeep Singh contends that if ultimately the High Court decides in his favour, the petitioner shall suffer an irreparable loss if he is not impleaded as a party.

10. The learned counsel representing Sh.Amandeep Singh has admitted that as of now, there is no declaration in his favour, as regards any right, title or interest in any part of the suit property. Mere pendency of a regular second appeal does not entitle Amandeep Singh to become a party in the execution petition which has arisen from an order of eviction.

11. There is yet another revision petition i.e. 2163 of 2021. It has been filed by Sh.Satnam Singh who has been declared as owner to the extent of 1/3rd share. The litigation in that regard is also pending in the High Court.

12. It is well settled that a co-owner is entitled to seek eviction of the tenant on behalf of the other co-owners. Moreover, the relationship of the landlord and tenant is not necessarily dependent upon ownership.

13. Keeping in view the aforesaid facts, the petitioners in Civil Revision No. 1847 and 2163 of 2021, respectively, cannot be impleaded as party/respondents in the pending execution petition which has arisen from the order of eviction in favour of Mrs.Suneet Tayal.

14. Keeping in view the aforesaid facts, Civil Revision No. 4867 of 2019 is allowed, whereas Civil Revision No. 1847 and 2163 of 2021 are hereby dismissed.

15. The miscellaneous application(s), if any, pending in all the revision petitions shall stand disposed of.

R.M.S.

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Petition allowed.