



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

148

**CR-7232-2024 (O&M)
Date of decision : 17.02.2025**

Tilak Raj and another

..... Petitioners

versus

Malkiat Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Anil Chawla, Advocate
for the petitioners.

Mr. Anirudh Gupta, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

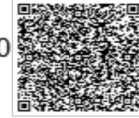
1. Tenant is in revision aggrieved of the orders passed by the Courts below, whereby the tenant has been ordered to be evicted on the ground of bonafide need of the landlord and has been ordered to handover vacant physical possession of the demised premises to the landlord.

2. Tenancy is not disputed. Father of the tenant Agya Ram was inducted by father of the landlord. As per landlord, after death of his father in terms of the deed of family settlement, the property in question consisting of demised shop fell to his son and he has become absolute owner thereof. After death of Agya Ram, tenancy rights qua the demised premises were inherited by the tenants. As per the landlord, tenants paid rent to him till July 2016 @ 1760/- per month. The landlord requires the demised premises for his own use and occupation. He is working as an insurance surveyor. At present, he is in possession



of one adjoining shop situated at Majitha Road, Amritsar. The said shop is too small and inadequate for him and his staff to be accommodated alongwith the customers. The landlord requires demised premises for carrying out his profession and the shop in question is suitable for his professional pursuit. It was further claimed that the demised premises has become unfit and unsafe for human habitation. The walls have developed cracks. The flooring has sunked down. The roof of the demised shop has bent down at various places. The wood work was eaten by white ants. Some of the portions had already fallen down. The landlord wants to reconstruct the same and to run his office in the demised premises.

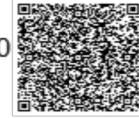
3. Tenant filed reply claiming that major portion of the property is already in possession of the landlord. The same is on the ground floor and is lying vacant. The landlord is occupying entire first floor, but is not utilizing the same. The major portion of the ground floor and the entire first floor being in possession of the applicant, the same is sufficient for running of his business. It was further claimed that the landlord has sufficient properties in the urban area of Amritsar. Denying his bonafide need, tenant prayed for rejection of the eviction application. As a preliminary objections, tenant claimed that Jasbir Singh and Rajinder Singh who are uncles of the applicant, are the real owners of the property. Applicant is neither the owner nor the landlord of the property in dispute and has forcibly taken possession thereof from his uncles. It was further claimed that the co-owners have not been joined, the present eviction petition was not maintainable. Courts below ordered the eviction of the tenant.



4. Counsel for the tenant has raised two fold submission. He submits that landlord failed to produce the family settlement to prove that he is owner of the demised premises and thus, has attained the status of landlord. No co-owner was joined in the eviction petition. He further submits that it has come on record that the landlord is in possession of the entire first floor. Another shop which was vacated from the tenant is lying vacant. Thus, it was not a case of bonafide need, but that of greed of the landlord.

5. *Per contra*, counsel for the landlord submits that co-owner Jasbir Singh entered witness box as AW3. He specifically deposed that half of the portion of the building went to the share of Raghubir Singh after partition. Front side has gone to the share of Raghubir Singh father of landlord- eviction petitioner. The demised premises forms part of the said portion. On the issue of non joining of the co-sharers, reliance is being placed upon ratio of law laid down by Supreme Court in the case of ***India Umbrella Manufacturing Co. and others vs. Bhagabandei Agarwalla (Dead) by LRs. Smt. Savitri Agarwalla 2004(3) SCC 178***, to contend that the same shall have no effect on the petition filed by landlord.

6. Counsel for the landlord further points out that the case of the landlord since inception is that the demised premises has been rendered unfit and unsafe for human habitation. The same needs to be reconstructed after demolition. Landlord who is practicing as insurance surveyor, has staff and clients to attend to his office. In order to accommodate the same, he needs adequate accommodation.

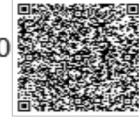


7. I have heard counsel for the parties and have carefully gone through the records of the case.

8. A perusal of the statement of Malkiat Singh while appearing as AW1 would reveal that he explicitly testified that the property in question has fallen to his share on the basis of family settlement dated 04.07.1998. He was cross-examined at length. No suggestion was put to him qua family settlement. His uncle Jasbir Singh appeared as AW3. He supported the case of the landlord with respect to partition. He admitted that the shop in question has fallen to the share of his brother Raghubir Singh-father of the landlord. He deposed that the partition was effected through Court. At no point of time, he was asked to produce the copy of the order passed by the Court. Apart from that there is no denial on behalf of the tenant that they continuously paid rent to the landlord-Malkiat Singh up till 2016. Thus, the petitioners before this Court in revision cannot be allowed to question the status of the landlord once he attorned him as landlord by paying rent. So far as the plea raised with respect to non-joining of the co-owners is concerned, once the landlord proved on record that shop in question has fallen to his share, there is no requirement to implead co-owners. Even if the property in question is held to be joint, the issue with respect to non-joining of co-owners already stands dealt elaborately by Supreme Court in the case ***India Umbrella Manufacturing Co. (supra)***, wherein the Supreme Court observed as under:-

“xx xx x

6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well



settled that one of the co- owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See: *Sri Ram Pasricha v. Jagannath* [(1976) 4 SCC 184] and *Dhannalal v. Kalawatibai & Ors.* [(2002) 6 SCC 16, para 25). This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co- owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co- owners to seek ejection must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.”

9. So far as the issue regarding bonafide need is concerned, both the Courts below have returned concurrent finding of fact. Landlord has successfully proved his bonafide need. Tenant has not been able to point out any other property within the urban area of Amritsar that the tenant was occupying and/or had vacated without any sufficient cause.

10. Finding no merit sin the present revision petition, the same is ordered to be dismissed.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

17.02.2025

Dinesh

Whether speaking/reasoned :

Yes

Whether Reportable :

No