

IN THE COURT OF DIVYA SHARMA, PCS,
RENT CONTROLLER, CHANDIGARH

Case Type	RC/ARC	
Filing No.	2006/2016	Filing Date: 28.04.2016
Registration No.	288/2016	Date of Registration: 29.04.2016
CNR No.	CHCH02-001971-2016	
Date of Decision	23.10.2024	

Varun Gupta son of Shri Ram Gupta, resident of House No. 1919, Sector 22-B, Chandigarh.

...Petitioner

Versus

1. M/s Chottu Mottu Verma, Side Window, SCF No. 10, Sector 22-D, Chandigarh through its Proprietor/Authorized person.
2. Raj Kumar, son of Vishwa Mitter, resident of House No. 265, Sector 15-A, Chandigarh.
3. Raj Kumar, son of Vishwa Mitter, Proprietor/Authorized person of M/s Chottu Mottu Verma, Side Window, SCF No. 10, Sector 22-D, Chandigarh.

...Defendants

Eviction Petition under Section 13, 13(2) (i),
13(2) (ii), 13(2) (iii), 13(2) (iv) and 13(3) (I)
of the East Punjab Urban Rent Restriction
Act, 1949 as applicable to Union Territory of
Chandigarh by way of Extension Act of 1974
as amended from time to time for eviction of

respondents from the premises described as
area of side Window Ground Floor of SCF
No. 10, Sector 22-D, Chandigarh whereas the
respondents are running their business in the
name and style of M/s Chhottu Mottu Verma,
Side Window Ground Floor, SCF No. 10,
Sector 22-D, Chandigarh.

Present: Sh. Gagan Aggarwal, Advocate for the petitioner.
Sh. R.K. Dogra, Advocate for respondents.

ORDER

The present petition has been filed by petitioner Varun Gupta under Section 13 of The East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Rent Act') seeking ejectment of respondents from *Side Window of Ground Floor of SCO No. 10, Sector 22-D, Chandigarh* (hereinafter referred to as the 'tenanted premises').

1. Succinctly, facts as asserted by the petitioner is that he along with his parents had purchased 10% share of SCF No. 10, Sector 22-D, Chandigarh with an intention to settle his business in the side window on ground floor, in which respondents are presently doing business. At the time of purchasing 10% share of said SCF, seller had disclosed that after purchase, respondents will become tenant of petitioner and that the petitioner will be entitled to collect and recover rent from respondents being his landlord. Respondents are in arrears of rent

from April, 2008 @ Rs.3000/- per month till date, excluding electricity charges. Further averred that respondents are liable to be evicted from the demised premises on following grounds: -

- i) Respondents are in arrears of rent from April, 2008 @ Rs.3000/- per month excluding electricity charges, till date.
- ii) Petitioner had purchased 10% share of SCF No. 10, Sector 22-D, Chandigarh with an intention to settle his business in the side window on the ground floor, in which respondents are doing business at present, therefore, the said premises is required by the petitioner for his personal and bonafide requirement/need of occupation as the petitioner does not own or possess any other commercial accommodation in Chandigarh nor he has vacated or disposed of any commercial property after the commencement of Rent Restriction Act.

The petitioner is not left with any other remedy but to approach the Court for eviction of respondents from the tenanted premises as despite receipt of legal notice dated 18.04.2016, respondents have failed to evict the demised premises. Hence, the present petition.

2. Upon notice, respondent appeared and file written statement/reply taking *preliminary objections* that the present petition is liable to be dismissed on the ground of non-joinder of parties, petitioner has concealed material facts from the court. *On merits*, submitted that Shop Cum Flat No. 10 Sector 22-D, Chandigarh was allotted to M/s Kawality (Prop. Agya Ram Lamba). After the death of Agya Ram

Lamba, Vinod Kumar Lamba, Anil Kumar Lamba, Sameer Kumar Lamba S/o Agya Ram Lamba & Smt. Swarajwati Wd/o Agya Ram Lamba hold 25% share. Respondent was inducted as a tenant in the side window of demised premises and was paying monthly rent of Rs. 450/- to Vinod Kumar Lamba. In the year 1987 a notice under Section 8-A of Capital of Punjab (Development & Regulation) Act 1952 was issued by Estate Office Chandigarh to the owners i.e., Sh. Vinod Kumar Lamba & others as well as respondent for misuse of premises. Since, none pursued the matter, hence, vide order dated 28.03.1988 building was resumed. Sh. Vinod Kumar Lamba filed an appeal before Chief Administrator, Chandigarh and after hearing, matter was remanded back to Estate Officer vide order dated 30.03.1990 with an observation that there are multiple illegal and unauthorized constructions in the building. In compliance of the said order, fresh notice was issued to all the occupants and owners on 29.05.1990, however, owners suppressed the notice and started selling shares in the property to different persons mainly the tenants occupying respective shares. Further averred that all the transfers/sale were made in connivance with the officials of Estate Office, Chandigarh. Sale Deed dated 27.5.2015 in respect of 11.66% share of the premises in name of M/s Radhey Shyam Garments (1.66%), Shri Ram Gupta, Smt. Nirmal Gupta & Varun Gupta (10%) and subsequent transfer made by Estate office in their name is under challenge in civil suit titled as "Chotu Motu Verma Vs Shri Ram Gupta & Ors." which is

pending adjudication

Further submitted that petitioner has only 3.33% share in the demised premises Anil Kumar Lamba from whom petitioner had purchased the share was never landlord of respondent. Petitioner along with M/s Radhey Shyam Garments, Shri Ram Gupta and Smt. Nirmal Gupta (having 11.66% share) got possession of second floor and as per the knowledge of respondent mobile tower is installed over the barsati portion of which petitioner is getting rent. Hence, they are in possession of more than 20% share and cannot seek possession of any other portion without any basis. Further submitted that petitioner had purchased 3.33% share in the property vide alleged sale deed dated 27.5.2015 which was entered in the record of Estate Office on 25.1.2016, hence, petitioner cannot claim rent from April 2008 @ Rs. 3000/- per month Further submitted that petitioner is doing business on the second floor, though it can only be used for residence purpose, as such fresh notice of violation was issued by the Estate Office. With these submissions and denying remaining assertions as made in the petition prayed to dismiss the petition with cost.

3. Replication to the written statement/reply filed by the respondents was filed wherein assertions made in the written statement/reply were denied and those made in the petition were reiterated. Accordingly, from the pleadings of both the parties following issues were framed: -

1. Whether the respondent is liable to be evicted from demised premises on the ground of bona fide personal necessity

- of petitioner, as prayed for? OPP*
- 2.Whether the respondent is liable to be evicted from demised premises on the ground of non-payment of rent, as prayed for? OPP*
- 3.Whether the present petition is not maintainable? OPR*
- 4.Whether the petitioner as concealed material facts from this Hon’ble Court? OPR*
- 5.Relief.*

4. In order to prove its case, petitioner examined following witnesses: -

PW-1	Varun Gupta	Petitioner vide his duly sworn affidavit cum deposition sheet Ex.PW1/A deposed on the lines of petition and proved on record documents i.e., copy of transfer letter dated 25.01.2016 <i>Ex.P-1</i> , site plan <i>Ex.P-2</i> , copy of legal notice and postal receipts <i>Ex.P-3</i> to <i>Ex.P-6</i> .
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Thereafter, on 03.01.2023 learned counsel for petitioner tendered into evidence certified copies of written statement filed by Assistant Estate Officer exercising the powers of Estate Office, Chandigarh *Ex.P7* and closed the evidence of petitioner in affirmative.

5. In defence, respondent examined following witnesses: -

RW-1	Amit Kumar, Record Keeper from Estate Office, Chandigarh.	Witness to prove on record copy of notice dated 12.08.1987 <i>Ex.R1/RW1</i> , resumption order dated 28.03.1988 <i>Ex.R2/RW1</i> and copy of order dated 30.03.1990 <i>Ex.R3/RW1</i> .
RW-2	Mangal Singh, Senior Assistant Legal Cell Branch from Estate Office, Chandigarh.	Witness to prove summoned record i.e., copy of allotment letter dated 24.09.1959 <i>Ex.R-1/RW2</i> , deed dated 15.12.1975 <i>Ex.R2/RW2</i> , copy of order dated 23.05.2012 <i>Ex.R3/RW2</i> , communication dated 03.10.2012 <i>Ex.R4/RW2</i> , communication dated 17.10.2012 <i>Ex.R5/RW2</i> , communication dated 26.11.2012 <i>Ex.R6/RW2</i> , notings/orders dated 30.01.2013 <i>Ex.R7/RW2</i> , communication dated 03.01.2014 <i>Ex.R8/RW2</i> , communication dated 01.05.2014 <i>Ex.R9/RW2</i> , communication dated 19.05.2014 <i>Ex.R10/RW2</i> , transfer letters dated 09.10.2014, 09.10.2014 and 30.09.2014 <i>Ex.R11/RW2</i> to <i>Ex.R13/RW2</i> , communication dated

		17.04.2015 and 06.04.2015 <i>Ex.R14/RW2</i> and <i>Ex.R15/RW2</i> .
RW-3	Raj Kumar Verma	Respondent Raj Kumar Verma vide his duly sworn affidavit cum deposition sheet Ex.RW3/A deposed on the lines of written statement/reply which need not to be reproduced for the sake of brevity. He proved copy of rough site plan <i>Ex.RW-3/R-1</i> , copy of summon alongwith rent petition <i>Ex.RW-3/R-2</i> , certified copies of statement and order <i>Ex.RW-3/R-3</i> , copy of notice <i>Mark RW-3/R-A</i> and <i>Ex.RW-3/R-B</i> , copy of resumption order and remand order <i>Mark RW-3/R-C</i> and <i>Mark RW-3/R-D</i> , copy of agreement to sell dated 27.8.2012 <i>Mark RW-3/R-E</i> , sale agreement <i>Ex.RW-3/R-4</i> , copy of plaint in case titled as M/s Chottu Motu Verma Versus Ram Gupta and Ors <i>Ex.RW3/R-5</i> , notice under Rule 14 and 10 of Chandigarh Estate Rules for building violations

		<i>Mark RW3/R-F.</i>
RW-4	Amninder Singh Clerk from office of SDM Chandigarh, Deputy Commissioner Office, Sector 17, Chandigarh.	Witness to prove copies of show cause notices <i>Ex.RW4/1</i> and <i>Ex.RW4/2.</i>
RW-5	Lata, Lower Division Clerk, Office of SDO Electricity, Chandigarh.	Witness to prove list pertaining to electricity meter installed at SCF No. 10, Sector 22-D, Chandigarh <i>Ex.RW5/1</i> and ledger account of nine meters <i>Ex.RW5/2.</i>
RW-6	Manpreet Singh Mann, Clerk in Chief Administrative Office, Sector 9, Chandigarh	Witness to prove certified copy of order passed in Appeal No. 230 of 1988 titled as Vinod Kumar Lamba Vs. Estate Office <i>Ex.RW6/R-1.</i>
RW-7	Rakesh Kumar Clerk in the Office of Sub Registrar, Sector 17, Chandigarh.	Witness to prove copy of sale deed <i>Ex.R-3/PW-1</i> and documents attached with sale deed <i>Ex.RW-7/R-1.</i>
RW-8	Gulshan Kumar, Senior Assistant Estate Office, Chandigarh	Witness to prove communication dated 04.06.2014 <i>Ex.RW-8/1,</i> communication dated 26.04.2017

		<i>Ex.RW-8/2</i> , copy of noting <i>Mark R-8/1</i> and copy of noting <i>Ex.RW-8/3</i> .
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Thereafter, learned counsel for respondent tendered into evidence certified copy of rent petition titled as “Vinod Kumar Versus Vishwa Mitter” *Ex.RY* and certified copy of statement of parties recorded in rent petition *Ex.RZ* and closed documentary evidence of respondent vide statement dated 14.03.2024.

6. It was argued by Sh. Gagan Aggarwal, Counsel for petitioner that the petitioner has successfully proved its case not only on the basis of balance of probabilities but beyond the shadow of reasonable doubt. Further argued that petitioner along with his family members had purchased 10% share in SCF No. 10, Sector 22-D, Chandigarh from Anil Kimar Lamba one of the co-owner as evident from transfer letter Ex.P1 with an intention to settle his business in the demised premises which forms part of aforementioned property. Since, then respondent who runs his business in the demised premised under the name and style of M/s Chhottu Motu became the tenant of petitioner. However, respondent has not paid rent since April, 2008. Further argued that petitioner requires the demised premises for his personal necessity. Hence, respondent is liable to be evicted from the demised premises for non-payment of rent and personal necessity. Further argued that petitioner being one of the co-owners of SCF No. 10, Sector 22-D, Chandigarh is entitled to file petition for eviction of respondent from

the demised premises. With these arguments prayed that the present petition be allowed with cost.

7. Controverting the arguments put forth by learned counsel for petitioner Sh. R.K.Dogra, Counsel for respondent argued that petitioner has no locus standi to file the present petition as Anil Kumar Lamba from whom petitioner had purchased share in SCF No. 10, Sector 22-D, Chandigarh was never the landlord of respondent. Respondent was paying rent to Vinod Kumar Lamba (co-owner). Further argued that no sale of share could have been made in favor of petitioner as the demised premises have already been resumed by the Estate Office vide order Ex.R3/RW2. Co-owners of SCF No. 10, Sector 22-D, Chandigarh have not been impleaded as a party in the instant case. Further argued that with respect to demised premises one Satwant Singh had filed an eviction petition wherein respondent has admitted Satwant Singh as his landlord, hence, petitioner is not entitled to seek eviction of respondent from demised premises. Further argued that respondent had been regularly paying rent and the petitioner does not require demised premises for personal necessity. With these arguments prayed that the present petition be dismissed with cost.
8. After hearing the submissions made by learned counsel for both the parties, this court has gone through the pleaded case of parties, documents available on file, legal proposition involved in the present case and case law referred by them. After hearing both sides, this

court has preferred to decide controversy between the parties while returning findings on each issue one by one. My issue-wise findings are as follows: -

ISSUE NO.1 AND 2

9. Both the issues are taken up together being interconnected and for the sake of brevity. Onus to prove these issues was placed upon the petitioner. It is well settled that it is the petitioner who has to prove its case and has to stand on its own legs. Petitioner cannot take benefit of weaknesses of the case of respondent.
10. Petitioner Varun Gupta has approached this Court seeking relief of ejectment of respondent from the tenanted premises on the ground of non-payment of rent and personal necessity of petitioner. On the other hand, as per respondent, there is no relationship of landlord and tenant between the parties. In these circumstances, in order to discharge its onus, petitioner was primarily supposed to establish that there exists relationship of landlord and tenant between the parties. "Landlord" has been defined under Section 2(c) of the East Punjab Urban Rent Restriction Act, 1949 as any person who is entitled to receive rent in respect of any building 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. Accordingly, petitioner was to establish that the premises in question were either owned by it or the Petitioner Trust was entitled to receive rent on behalf of any other person.

RELATIONSHIP OF LANDLORD AND TENANT

11. It is the case of petitioner that he along with his parents had purchased 10% share of SCF No. 10, Sector 22-D, Chandigarh from Anil Kumar Lamba which was transferred in his name along with Ors vide transfer letter dated 25.01.2016 Ex.P1, with an intention to settle his business in the side window on the ground floor where respondents are presently doing there business. At the time of sale of share, Anil Kumar Lamba had informed that henceforth respondent will become tenants of petitioner. ***On the contrary***, respondent has taken a stand that no transfer of share could have been made in favor of petitioner as the demised premises stands resumed vide order dated 28.03.1988 Ex.R2/RW/1 passed by the Estate Office, appeal against which was filed by Vinod Kumar Lamba before the Chief Administrator. Vide order dated 30.03.1990 Ex.R3/RW-1 it was observed that multiple violations/illegal construction has been made in entire SCF No. 10, Sector 22-D, Chandigarh, hence, matter was remanded back to the Estate Office with a direction to decide the matter afresh after giving notice to both the parties. It is also the defence of respondents that Vinod Kumar Lamba and not Anil Kumar Lamba is their landlord to whom he had been paying rent @ Rs.450/- p.m. Accordingly, there are two primary defences of respondents i.e.-

- a. Due to resumption orders of SCF No. 10, Sector 22-D, Chandigarh, transfer of share made in favor of petitioner vide transfer letter Ex.P1 is illegal, null and void.
- b. Anil Kumar Lamba was not his landlord. Rather, he was

paying rent to Vinod Kumar Lamba.

For effectual adjudication of the case, each defence shall be dealt with separately.

12. Perusal of judicial record shows that on 24.09.1959 SCF No. 10, Sector 22-D, Chandigarh was allotted to M/s Kawality (Proprietor Agya Ram Lamba) by the Estate Office. After the death of Agya Ram Lamba, Vinod Kumar Lamba, Anil Kumar Lamba, Sameer Kumar Lamba and Swarajwati held 25% shares therein. On 12.02.1987 show cause notice under Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 was sent to Vinod Kumar Lamba and Ors with respect to SCF No. 10, Sector 22-D, Chandigarh stating that “*Whereas prima facie you are using/have permitted the use of premises for the purpose other than specified i.e., **show window has been converted into shop, whereas the same is meant for display of articles.***” Vide order dated 28.03.1988 SCF No. 10, Sector 22-D, Chandigarh was resumed. Against the said order Vinod Kumar Lamba preferred an appeal and remanded the case back to the Estate Officer for taking up fresh proceedings against the appellants and tenants and to pass a fresh order after giving adequate opportunities to all of them for being heard in person with an observation that “*...Because the Estate Officer failed to take notice of the misuse of entire building and of illegal construction and resumed the site on the sole ground of the misuse of the show window which in itself does not constitute a valid ground for taking such an extreme*

step of resumption of the site and building valued at several lacs of rupees and I consider the action of Estate Officer as inadequate and inappropriate.” Thereafter, fresh show cause notice was given to Vinod Kumar Lamba and Ors, however, no fresh order of resumption has been passed till date. ***Amit Kumar, Record Keeper, Misuse Branch, Estate Office (RW-1)*** stated in the cross-examination that he cannot tell whether SCF No. 10, Sector 22-D, Chandigarh is resumed as on today or not. ***Amninder Singh, Court Ahlmad, office of SDM (Central), Chandigarh cum Deputy Commissioner Office, Sector 17, Chandigarh (RW4)*** produced show cause notices Ex.RW4/1 and Ex.RW4/2 and stated in the cross-examination that no violation of window is mentioned in that notices. Admittedly, one civil suit has been filed by ‘M/s Chhotu Motu Verma against Ram Gupta, Nirmal Gupta, Varun Gupta and Ors’ Ex.RW-3/R5 wherein he has challenged sale deed dated 1.06.2015 with respect to sale of 11.66% share executed in favor of defendants. In the said suit written statement Ex.P7 was filed by Virender Chaudhary, HCS, Assistant Estate Officer, exercising the powers of Estate Officer, wherein in paragraph no. 7 it is stated that *after the passing of order dated 30.03.1990 by the Chief Administrator, no final decision has yet been taken. Property in question i.e., SCF No. 10, Sector 22-D, Chandigarh was transferred after getting the undertaking of next purchasers that they are personally liable for settling all the court cases and past liabilities.* In paragraph no.11 of the written statement, it is

specifically stated that *'property in question may not be said to be resumed, since the proceedings are still sub-judice before the Estate Officer in compliance of order dated 30.0.1990 passed by the Chief Administrator, Chandigarh.'*

The court is of the considered view that even though sale deed dated 1.06.2015 on the basis of which transfer letter Ex.P1 was executed is subjudice before the civil court, yet, since this is one of the primary defences of the respondent, hence, this court would restrain its observations to the extent that once Chief Administrator remanded back the matter to Estate Officer, to decide the matter afresh, hence, it cannot be said that SCF No. 10, Sector 22-D, Chandigarh has been resumed until fresh orders are passed to this effect. Furthermore, in transfer letter dated 25.01.2016 it is specifically mentioned in clause 4 that *"you shall remove the building violations and get the misuse vacated immediately after the mutation in his favour."*

In the event of your failure to comply with the above-mentioned conditions further action under Section 8-A of the Capital of Punjab (Dev & Reg) Act, 1952 Chandigarh Amendment Act, 1973 for the resumption of site shall be initiated against you." Hence, resumption order if any is inter-se between the owners and the Estate Office and respondents (tenant) cannot derive any benefit out of it. Accordingly, this defence of respondents holds no ground.

13. It was argued by learned counsel for respondent that he was

paying rent to Vinod Kumar Lamba and not Anil Kumar Lamba, hence, any sale of share made by Anil Kumar Lamba in favor of petitioner will not make petitioner as his landlord. It was also argued that with respect to demised premises Satwant Singh had filed one eviction petition against the respondent wherein respondent had tendered monthly rent of Rs. 450/- to Satwant Singh w.e.f. 01.01.2003 to 31.07.2018 in pursuance to which eviction petition was dismissed as withdrawn vide order dated 03.01.2023. Perusal of judicial record shows that in the instant case, on 28.04.2017 one application was moved by Satwant Singh under Order 1 Rule 10 CPC for impleading him as a party as he had purchased 15% share in SCF No. 10, Sector 22-D, Chandigarh vide sale deed dated 06.02.2014 and the demised premises falls in the area purchased by the applicant. The said application was dismissed on 09.04.2018 by the Ld. Rent Controller, Chandigarh with an observation that co-owner is not a necessary party to the eviction petition. Thereafter, on 04.05.2018 one Assignment Deed Mark RW3/PA was executed between Anil Lamba and Satwant Singh wherein it is mentioned that *“Anil Kumal Lamba was the co-owner of SCF No. 10, Sector 22-D, Chandigarh and he along with his brother Vinod Kumar Lamba sold 15% share in the said SCF vide registered sale deed dated 06.02.2014. The tenancy rights of side show window were in favor of M/s Chhotu Motu Verma @ Rs. 450/- p.m. and Anil Kumar Lamba was the landlord qua tenancy of said show window.....The side window which is under the tenancy of M/s*

Chhotu Motu Verma falls towards the portion in occupation of Satwant Singh co-owner occupying 33'9" x 21'4" of the first floor with independent stair case from the front side which was earlier in his possession as per registered rent deed/agreement of the year 1987. Therefore, now landlord has surrendered the said tenancy of M/s Chhotu Motu Verma with symbolic possession of tenanted premises i.e., side show window on the ground floor adjoining to staircase being used by Satwant Singh in favor of Satwant Singh with all rights to recover entire arrears of rent and possession from the tenant M/s Chhotu Motu Verma." On the basis of aforementioned Assignment Deed, Satwant Singh filed a fresh application under Order 1 Rule 10 CPC which was again dismissed by the Ld. Rent Controller, Chandigarh vide order dated 09.10.2019. It transpires that assignment deed dated 04.05.2018 was got executed in order to infringe the right claimed by petitioner in the present petitioner, that is why admittedly, no revision was filed against the order of dismissal of two applications filed under Order 1 Rule 10 of CPC.

On 18.05.2018 one eviction petition Ex.RW3/P2 was filed by Satwant Singh against M/s Chhotu Motu Verma through Raj Kumar Verma seeking eviction of respondent from side window on the ground floor of SCF No. 10, Sector 22-D, Chandigarh. In written statement Ex.RW3/P1 respondent denied Satwant Singh as his landlord and stated that '*assignment deed dated 04.05.2018 and special power of attorney is clear afterthought of petitioner especially*

when Sh. Anil Kumar Lamba had already allegedly sold his share to petitioner in the year 2014. Respondent was never a tenant under Sh. Anil Kumar Lamba at any stage, therefore the contents stated to these documents are concocted and false.’ However, on 03.01.2023 matter was settled between respondent Raj Kumar and petitioner Satwant Singh whereby respondent vide his statement Ex.RW3/R3 admitted Satwant Singh to be his landlord by virtue of sale deed dated 08.02.2014 and assignment deed dated 04.05.2018 having derived the title from Vinod Kumar Lamba. Arrears of rent for the period 1.01.2003 to 31.07.2018 @ Rs. 450/- was paid to Satwant Singh in pursuance to which he withdrew the rent petition and was dismissed as withdrawn on the same day.

Sale deed dated 08.02.2014 Annexure A-3 (admitted document) was executed by Anil Kumar Lamba and Vinod Kumar Lamba in favor of Satwant Singh and sale deed dated 27.05.2015 (later in time) was executed by Anil Kumar Lamba in favor of petitioner. Hence, if respondent has admitted Satwant Singh as his landlord on the basis of sale deed dated 08.02.2014 (executed by Anil Kumar Lamba and Vinod Kumar Lamba) and assignment deed dated 04.05.2018 (executed by Anil Kumar Lamba), hence, he cannot deny petitioner as his landlord on the basis of sale deed dated 27.05.2015 executed in favor of petitioner and ors by Anil Kumar Lamba. Moreso, no evidence has been led by the respondent to prove that he was paying rent to Vinod Kumar Lamba. Neither Vinod Kumar Lamba nor Anil

Kumar Lamba have been examined to prove the same. Moreso, neither in sale deed executed in favor of petitioner and ors Ex.R3/PW1 nor in sale deed executed in favor of Satwant Singh Annexure A-3 there is recital of side window shop. Hence, petitioner being a co-owner in SCF No. 10, Sector 22-D, Chandigarh is entitled to file the present eviction petition and on the basis of discussion made above relationship between the petitioner and respondent of landlord and tenant stands proved.

14. It was also argued by learned counsel for respondent that ejectment petition has been filed only by one co-owner without obtaining the consent of other co-owners, hence, the present petition is not maintainable. However, in the case titled as ***Mukesh Sudhir v. Vinish Sood***, CR No. 6289 of 2019 (O&M) and CR No. 4959 of 2017 (O&M), DOD-30/11/23 *Law Finder Doc Id # 2412803*, it was observed by Hon'ble Punjab and Haryana High Court that: -

*“14. Furthermore, I am unable to find substance in the argument raised by learned counsel for the petitioner that consent of the predecessor-in- interest of the present co-owners was also not taken. It is settled law that one of the co-owners can file suit for eviction of tenant and it is not necessary for the co-owner to show before initiating the eviction proceeding that he had taken consent of the other co-owners. Reliance in this regard can be placed on judgment of the Hon'ble Apex Court in "**Mohinder Prasad Jain v. Manohar Lal Jain**", reported as*

(SC) 2006 (2) SCC 724, relevant para of which is reproduced below:-

"10. A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein. The submission of the learned counsel for the appellant to the effect that before initiating the proceedings, the appellant was required to show that he had experience in running the business in Ayurvedic medicine, has to be stated to be rejected. There is no law which provides for such a pre-condition. It may be so where a licence is required for running a business, a statute may prescribe certain qualifications or pre-conditions without fulfilment whereof the landlord may not be able to start a business, but for running a wholesale business in Ayurvedic medicine, no qualification is prescribed. Experience in the business is not a pre-condition under any statute. Even no experience therefore may be necessary. If the respondent has proved his bona fide requirement to evict the appellant herein for his own purpose, this Court may not, unless an appropriate

case is made out, disturb the finding of fact arrived at by the Appellate Authority and affirmed by the High Court."

15. Moreover, eviction sought by one of the co-sharers is not an act which causes prejudice to the other co-sharers, rather it enhances towards the rights of the joint owners as well as to the value of the property in the given facts when it is fetching just nominal rent. By purchasing a part of the property during pendency of the eviction petition, purchaser having become co-sharer/co-owner, cannot defeat the vested rights of the other existing co-owners by raising objections to the maintainability of the eviction petition, particularly, when no such objection was ever raised at the instance of his vendor. Such co-owner having purchased part of demised premises during pendency of eviction petition is estopped by the act and conduct of his/her predecessor and cannot travel beyond it just by siding with the tenant, so as to defeat the rights of other co-owners in the joint property, which would be impermissible in law, while regulating the inter se rights of co-owners in a joint property."

Accordingly, it stands amply clear that eviction petition filed by one of the co-owner without impleading the other co-owners is legally maintainable.

ARREARS OF RENT AND PERSONAL NECESSITY

15. Since, it has come on record that relationship of landlord and tenant exists between the petitioner and respondent, now it has to be

seen whether respondent is liable to be evicted for non-payment of rent or not. It was argued by learned counsel for petitioner that respondent is in arrears of rent from April, 2008 @ Rs. 3000/- p.m. On the contrary it was argued by learned counsel for respondent that he was inducted as a tenant @ Rs. 450 p.m. and had been regularly paying rent to Vinod Kumar Lamba. Admittedly, respondent was inducted as tenant at monthly rent of Rs. 450/-. Vide transfer letter dated 25.01.2016 Ex.P1 petitioner stepped into the shoes of co-owners. Since, petitioner became the landlord only after execution of transfer letter dated 25.01.2016, hence, petitioner cannot claim rent from April, 2008 to January, 2016. It is pertinent to mention that vide order dated 10.07.2018, provisional assessment of rent was made for the period 1.06.2016 to 31.07.2018 @ Rs. 450/- p.m. and respondent had tendered an amount of Rs.13,489/- as rent payable upto 31.07.2018 along with interest and costs. It was also directed that respondent shall pay future rent by the 10th of British Calendar Month. Admittedly, no rent was paid to petitioner after 31.07.2018.

Furthermore, as evident from certified copy of statement of respondent and order of court dated 03.01.2023 Ex.RW3/R-3 rent has been paid to Satwant Singh (co-owner) from 1.01.2003 to 31.07.2018 @ Rs. 450/- p.m. and in addition to that respondent tendered a sum of Rs. 27,662/- as monthly rent from 01.08.2018 to 31.01.2023. Since, rent upto 31.01.2023 has already been paid to Satwant Singh, hence, respondent cannot be asked to pay rent of aforementioned period

again. After 31.01.2023 there is no evidence to prove that rent was paid to the petitioner/Satwant Singh. Hence, respondent is in arrears of rent from 1.02.2023 to 31.10.2024 (20 months) @ Rs. 450/- p.m. i.e., Rs. 9000/-.

16. Now, so far as ejectment of respondent from the tenanted premises on the ground of non-payment of arrears of rent is concerned, certainly he is liable to be evicted from the tenanted premises, but in view of pronouncement of Hon'ble Supreme Court in the case titled as ***Rakesh Wadhawan v. Jagdamba Industrial Corporation***, AIR-2002, Supreme Court-2004, a conditional order is required to be passed and an opportunity is required to be afforded to the tenant/respondents to make payment of arrears of rent regarding the deficient amount and only failing which, the respondent shall be liable to be evicted.

17. It was also argued by learned counsel for petitioner that he requires the demised premises for running his business. SCF No. 10, Sector 22-D, Chandigarh is shop cum flat. It was argued that petitioner is maintaining residence on the second floor and requires demised premises for running business on the side window of ground floor. On the contrary no question was put by the respondent challenging personal necessity/bonafide requirement of petitioner over the demised premises. As per the settled position of law, landlord is the best judge of his/her own requirement. Bonafide requirement in respect of landlord is to be seen from the point of view of landlord,

not tenant and Court need not be solicitous and venture into suggesting what would be more appropriate to landlord. In this regard, reliance is placed on observations of Hon'ble Punjab and Haryana High Court in the case titled as ***Jagdish Lal Seghal v. R.K. Jain*** 2006 (1) RCR (Rent) 82, wherein landlord retired from service and was having houses at Panchkula and Panipat and intended to settle at Panipat and filed suit for eviction of the tenant. It was opined therein that tenant cannot say since landlord had house at Panchkula why was he shifting to Panipat. In view of the settled law, it is observed that respondent cannot say that the petitioner does not require demised premises for running his business. ***Accordingly, issue no. 1 and 2 are decided in favour of petitioner.***

ISSUE NO. 3 AND 4

18. Onus to prove these issues was upon the respondent. It was argued by counsel for respondent that the present petition is not maintainable and the petitioner has not approached the Court with clean hands. In view of findings on issue no. 1 and 2, this Court is of the considered view that petitioner has not concealed facts from this Court and the petition filed by him is legally maintainable. ***Accordingly, issue no. 3 and 4 are decided against the respondent and in favor of petitioner.***

RELIEF

19. As an upshot of the aforesaid discussion, ejectment petition succeeds and is accordingly ***allowed with costs*** on the ground of

personal necessity. Respondent is ordered to hand over the vacant possession of demised tenanted premises within one month of the order, failing which petitioner will be at liberty to get the possession of demised tenanted premises in accordance with law.

The petition is also allowed on the ground of non-payment of rent for the period 1.02.2023 to 31.10.2024 @ Rs. 450/- p.m. i.e., Rs. 9000/-. However, in view of law laid down by Hon'ble Supreme Court in the case titled as ***Rakesh Wadhawan (Supra)***, an opportunity is to be granted to respondent to pay the said arrears of rent. Accordingly, if respondent pays the deficiency of said arrears of rent as mentioned here-in-before within a period of one month as specified above then this order regarding eviction on the ground of non-payment of rent shall cease to have effect, otherwise the respondent would hand over vacant possession of tenanted premises to the petitioner as stated above and failing which, petitioner may obtain the possession of tenanted premises in due course of law. Memo of costs be prepared and file be consigned to the Record Room.

Pronounced in the open Court:

Dated: 23.10.2024

Harmeet Kaur

Divya Sharma, PCS
Rent Controller,
Chandigarh
(UID No.PB0539)