

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 12 of 2025.

Date of decision : 25th November, 2025.

Daya Nand **...Petitioner.**

Versus

Karan Singh & Ors. **...Respondents**

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹

**For the petitioner : Mr. Ajay Kumar Dhiman,
Advocate.**

For the respondents : Mr. Kartik Kumar, Advocate.

Satyen Vaidya, Judge (Oral)

The instant revision petition has been filed under Section 24(5) of the Himachal Pradesh Urban Rent Control Act, 1987 (for short “the Act”) against the judgment dated 20.12.2024 passed by the learned Appellate Authority, Shimla in Rent Appeal No.26 of 2024 (17-S/14 of 2024) whereby the order of eviction dated 01.07.2024 passed by the learned Rent Controller, Shimla in Rent Petition No. 60-2 of 2020 has been affirmed.

¹ **Whether reporters of Local Papers may be allowed to see the judgment?**

2. The respondents herein (hereinafter referred to as “landlords”) had filed a petition for eviction of the petitioner herein (hereinafter referred to as “tenant”) from the residential premises in the building known as “Ramesh Cottage”, Sadhana Ghatti, Chotta Shimla, H.P. (for short “the premises”) situated on land comprised in Khata Khatauni No. 297, Khasra No. 452, 453, 454, Kita 3 measuring 199.83 sq. meters, Mohal Kasumpati Koti Station Ward Chotta Shimla, Tehsil and District Shimla (Urban). The premises was stated to be consisting of three rooms with a kitchen and toilet.

3. Landlords have alleged that the tenant had illegally, arbitrarily and without any written or oral consent of the landlords had made illegal construction in the premises. He had allegedly encroached upon the set backs of the building by making permanent structure and thereby had glazed it by CGI roof, wire mesh fencing, C.C. flooring and iron door. It was further alleged that the tenant had also constructed an iron platform along with the ground floor without the consent of the landlords.

4. As per the landlords, the tenant had failed to pay the rent of the premises w.e.f. 01.01.2015 till 01.01.2018 @ Rs.2750/- per month and thereafter w.e.f. 01.02.2018 till the

date of filing of petition @ Rs.3025/- per month. The tenant was also stated to be liable to pay the statutory interest on the amount of arrears of rent.

5. It was specific case of the landlords that the construction raised by the tenant was illegal and unscientific, which allegedly had caused damage to the retaining wall beneath the said illegal construction due to consequent seepage of water. It was also alleged that by raising illegal construction, the tenant had obstructed the passage to the basement of the building. In this manner, material impairment to the value and utility of the building/premises was alleged.

6. Tenant filed his reply and alleged that he had purchased the premises vide sale agreement dated 07.07.2015 from the brother of the landlords and in pursuance thereto, the possession had been handedover to him. It was submitted that the brother of the landlords namely Ajay Pathania had 1/3rd share in the entire property and he had sold his share to the tenant in terms of agreement dated 07.07.2015. In this manner, objection was taken as to the maintainability of the petition. Relationship of landlord and tenant inter se the parties was also denied.

7. As per the tenant, Ajay Pathania had become owner of the premises in terms of a family partition between the said Ajay Pathania and landlords. The tenant did not specifically deny the allegation of construction having been raised by him, rather he tried to assert his right to do so as a co-owner in the property. The averments made in the petition with respect to arrears of rent were also not specifically denied.

8. The tenant in his reply has made a reference to the filing of civil suits No. 15 of 2016 and 258 of 2020 by the landlords against him to challenge the agreement dated 07.07.2015.

9. Learned Rent Controller had framed the following issues:-

1. Whether the respondent illegally and arbitrarily without consent and permission of the landlords has raised illegal construction which has materially impaired the value and utility of the demised premises, as alleged?OPP
2. Whether the respondent is in arrears of rent of the demised premises w.e.f. 01.01.2015, as alleged?OPP

3. Whether the petition is neither competent nor maintainable?OPR
 4. Whether the petitioners are estopped from filing the present petition?OPR.
 5. Whether the petition is bad on account of better particulars?OPR
 6. Whether the petition is not properly valued for the purpose of court fees and jurisdiction?OPR
 7. Whether the petitioners have withheld material facts from the Court?OPR.
 8. Relief.
10. Issues No. 1 and 2 were decided in affirmative, whereas, all other issues were decided in negative. Accordingly, the learned Rent Controller allowed the petition by ordering eviction of the tenant on both the grounds. In respect of eviction on the ground of the arrears of rent, it was alleged that the tenant would not be evicted on the said ground in case he deposited the sum of Rs.4,11,069/- i.e. the rent due within a period of 30 days from the date of passing of order.
11. The aforesaid order passed by the learned Rent Controller was assailed by the tenant by filing appeal under Section 24 of the Act before the Appellate Authority, Shimla.

Rent Appeal No. 17-S/14 of 2024 has been dismissed by the learned Appellate Authority, Shimla vide judgment impugned by way of instant petition.

12. I have heard learned counsel for the parties and have also gone through the entire record carefully.

13. The objection of the tenant to the maintainability of the eviction petition has been dealt with by learned Rent Controller under issue No.3. Learned Rent Controller after appreciating the evidence on record has concluded that the tenant has no right to claim ownership over the premises under an unregistered agreement to sell.

14. As per the learned Rent Controller, except for bald assertion of the tenant, there was no other evidence on record to suggest any partition having been effected in respect of the joint property of the landlords including the premises. Having gone through the record, I have not found any material to suggest contrary. The tenant had neither produced on record any written instrument in that behalf nor he had examined any of the co-owners of the property to prove the partition. Thus, the finding that the premises was part of joint property of co-owners cannot be faulted with.

15. The tenant has asserted his right over the premises under an agreement to sell executed in his favour by one of the co-owner Ajay Pathania on 07.07.2015. A copy of said agreement has been placed on record as Ex.DW1/B. Admittedly, Ex. DW1/B remained agreement to sell only and the sale deed was not executed on its basis. In fact, the tenant is not holder of the title in respect of premises or any share therein.

16. Thus, the question whether the tenant, in such circumstances, could assert any better right in the premises, had rightly been decided against him.

17. The legal position is well settled in **T. Lakshmipathi and others vs. P. Nithyananda Reddy and others, (2003)5 SCC 150**, wherein the Hon'ble Supreme Court has held as under:-

“12. The first question which arises for decision is whether the appellants are absolved of their obligation of delivering possession over the suit premises to the landlord-respondent No.1 because the tenancy rights in the suit premises held by respondents No.2 and 3 and transferred by them to the appellants have merged in the ownership entailing determination of tenancy. The learned senior counsel for the appellants has placed strong reliance on the doctrine of merger.

13. *Law Lexicon (P. Ramanatha Aiyar, Second Edition, 1997) defines "merger" as the*

"destruction or 'drowning' by operation of law of the less in the greater of two estates coming together and vesting without any intervening estate in one and the same person in the same right. 'Whenever a greater estate and a less coincide and meet in one and the same person without any intermediate estate, the less is immediately annihilated, or in the law phrase is said to be merged that is, sunk or drowned in the greater (2 Black. Com.177; Tomlins Law Dictionary.)'".

According to Foa (General Law of Landlord and Tenant, Eighth Edition, p.642),

"a lease may be determined by merger. A merger takes place where a tenant acquires the immediate reversion: for when a greater estate and a less coincide in the same person without any intermediate estate, the less is said to be merged in the greater. For merger, however, to take place, the two interests must come to one and the same person in one and the same right."

14. *The common law doctrine of merger is statutorily embodied in Transfer of Property Act, 1882 Section 111 (d) provides:-*

"111. Determination of lease.____ A lease of immovable property determines____ xxx xxx xxx xxx

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;

xxx xxx xxx xxx"

A bare reading of the doctrine of merger, as statutorily recognized in India, contemplates (i) coalescence of the interest of the lessee and the interest of the lessor (ii) in the whole of the property (iii) at the same time (iv) in one person (v) in the same right. There must be a complete union of the whole interests of the lessor and the lessee so as to enable the lesser interest of the lessee sinking into the larger interest of the lessor in the reversion.

15. *In Badri Narain Jha & Ors. Vs. Rameshwar Dayal Singh & Ors., 1951 SCR 153, it was held by this Court that if the lessor purchases the lessee's interest, the lease no doubt is extinguished as the same man cannot at the same time be both a landlord and a tenant, but there is no extinction of the lease if one of the several lessees purchased only a part of the lessor's interest. In such a case the leasehold and the reversion cannot be said to coincide.*

16. *In Shaikh Faquir Bakhsh Vs. Murli Dhar & Ors., AIR 1931 PC 63, the plaintiff was holding on lease a portion of the entire property. Subsequently, plaintiff and defendant became pro indiviso joint proprietors of the property by purchasing shares from the earlier owners. The lease was subsisting when the shares were bought by the parties. In a suit for accounts filed by the plaintiff it was held that the plaintiff's rights under lease of a part do not merge in his rights as joint proprietor of the whole of the*

property and as between the parties the plaintiff held a valid and subsisting lease.

17. *A Division Bench of Patna High Court in Parmeshwar Singh & Ors. Vs. Mt. Sureba Kuer & Ors., AIR 1925 Patna 530, held that Section 111(d) applies only to a case where the interests of the lessee and of the lessor in the whole of the property become vested at the same time in one person in the same right. Where a co-proprietor in the property purchased for himself, the interest of the lessees of the whole property, there could be no merger. On purchase of a partial interest in tenancy rights by the owner, the onus of proving that the distinction between the interests continued to be kept alive subsequently also cannot be placed on the party alleging that the distinction was so kept alive To the same effect is the view of the law taken in Lala Nathuni Prasad & Ors. Vs. Syed Anwar Karim & Ors., 1919 IC 16 (Patna). Merger is largely a question of intention, dependent on circumstances, and the courts will presume against it when it operates to the disadvantage of a party, as was held by this Court in Nalakath Sainuddin Vs. Koorikadan Sulaiman, (2002) 6 SCC 1 (Para 20).*

18. *In the case at hand, it cannot be denied, nor has it been denied, that the appellants herein are not purchasers of the entire ownership interest in the property. What they have purchased is interest of some out of all the co-owners of the property. The interest of the respondent No.1, whatever be its extent,*

has not come to vest in the appellants. The appellants have also acquired the tenancy rights in the property. Thus they have acquired partial ownership and full tenancy rights. It cannot be said that the interests of the lessee and the lessor in the whole of the property have become vested in the appellants at the same time and in the same right. The lease cannot be said to have been determined by merger. So long as the interests of the lessee, the lesser estate and of the owner, the larger estate do not come to coalesce in full either the water of larger estate is not deep enough to enable annihilation or the body of lesser interest does not sink or drown fully.”

18. Keeping in view facts of instant case as also the exposition of law, as noticed above, it cannot be said that the relationship of landlord and tenant did not exist inter se the parties.

19. The first ground of eviction, as taken by the landlords was that the tenant had carried such additions and alterations in the premises which had materially impaired the value and utility thereof. As noticed hereinabove, the landlords in the petition had provided details of the construction raised by the tenant as addition to the premises and its adverse effect on the building. Noticeably, the tenant had not made any specific denial to such assertions. Rather, from his cross-

examination, a clear admission as to the construction having been raised by the tenant is made out. The tenant had only been trying to legitimize his acts on the basis of rights allegedly acquired by him under the agreement to sell, Ex.DW1/B.

20. Mr. Ajay Kumar Dhiman, learned counsel for the tenant has raised an argument that even if the construction was raised by him in the premises, it was not sufficient to attract the mischief under Section 14 of the Act as it had nowhere been proved that the construction had the effect of materially impairing the value and utility of the building. He has placed reliance on the judgment passed by the Hon'ble Supreme Court in ***Om Prakash vs. Amar Singh and another, AIR 1987 SC 617.***

21. No doubt, the mere making of additions and alteration in the tenant premises by the tenant will not given any cause to the landlord to seek eviction of the tenant unless it is proved that such additions and alterations have materially impaired the value and utility of the premises. Judgment in Om Prakash (supra) also deals with the same principle. However, in the facts of the instant case, tenant cannot derive any benefit. The specific allegation of the landlord that the additions and alterations made in the premises by the tenant

had caused seepage to the wall beneath and obstruction to the passage leading to the basement, has not been denied by the tenant at all. The tenant has appeared as his own witness and even at that stage has not stated anything regarding the alleged effect of additions or alterations in the building. Thus, the findings recorded by the learned Rent Controller and learned Appellate Authority with respect to the availability of ground of eviction and its proof in favour of the landlords, need no interference.

22. As regards, the eviction of the tenant on the ground of arrears of rent, learned counsel for the tenant has submitted that the rent due as calculated by the learned Rent Controller had been deposited by the tenant within 30 days from the date of passing of the order. Learned counsel for the landlords though has not denied the assertion of the tenant as a fact but has submitted that the deposit, if any, by the tenant of rent due with the learned Rent Controller is not sufficient compliance with the provisions of Section 14 of the Act. He submits that neither the rent was offered to the landlords by the tenant nor any information was supplied to them with respect to the deposit of the rent with the learned Rent Controller within 30 days.

23. From the perusal of the judgment passed by the learned Appellate Authority, it appears that the aforesaid issue had not been raised by the parties before the said authority. In this view of the matter, since the order of eviction on the ground of arrears of rent has been upheld, its executability will be a question that will remain open between the parties to be decided by the executing Court.

24. In result, there is no merit in the instant petition and the same is dismissed. Accordingly, the impugned judgment dated 20.12.2024 passed by the learned Appellate Authority, Shimla in Rent Appeal No.26 of 2025 (17-S/14 of 2024 and the eviction order dated 01.07.2024 passed by the learned Rent Controller in Case No. 60-2/2020 are further affirmed on both the grounds. No order as to the costs.

25. Pending applications, if any, also stand disposed of.

26. Records be sent back forthwith.

25th November, 2025.
(jai)

(Satyen Vaidya)
Judge