

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Civil Revision No.172/2025.****Date of Decision: 27th November, 2025.**

The HP State Cooperative Agriculture and Rural Development
Bank Ltd.Petitioner

Versus

Ramesh Kumar SoodRespondent

Coram

The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the Petitioner: Mr. Hamender Singh Chandel, Advocate.

For the Respondent: Mr. Y.P. Sood, Advocate.

Bipin Chander Negi, Judge (oral).

The present petition has been preferred against impugned order dated 05.07.2025, passed by the appellate authority, upholding the eviction order passed by the Rent Controller, vide order dated 18.05.2024.

2. Heard counsel for the parties, perused the impugned orders and the pleadings appended along with the present petition.

3. Based on the pleadings of the parties following issues were framed before the learned Rent Controller:-

1. Whether the respondent being tenant has carried out material additions and alterations in the tenanted premises without the consent of the petitioner? OPP.

2. Whether the demised premises is bona fide required by the petitioner for his own use and occupation? OPP.

3. Whether the demised premises is bona fide required by the petitioner for the purpose of rebuilding



and reconstruction which cannot be carried out without vacating it? OPP.

3A. Whether the respondent has changed the user of the premises without the written consent of the petitioner? OPP

4. If above said issues are proved in affirmative, whether the respondent is liable to be evicted from the demises premises? OPP.

5. Whether this petition is not maintainable in the present form? OPR.

6. Whether this petitioner has no locus-standi to maintain and file the present petition? OPR.

7. Whether there exists relationship of landlord and tenant between the parties of the petition? OPR

8. Whether cause of action arose in favour of the petitioner to file the present petition? OPR

9. Whether the petition is bad for non-joinder and misjoinder of necessary parties? OPR.

10. Whether petitioner has no approached the Court with clean hands and has suppressed the material facts from the Court? OPR.

4. Eviction had been ordered on all four grounds i.e. (a) on the ground of material addition/alteration in the tenanted premises without the consent of the petitioner, (b) demised premises are bona fidely required by the landlord for his own use and occupation, (c) demised premises are bona fidely required by the landlord for the purpose of rebuilding and reconstruction, which cannot be carried out without vacating the same and (d) last but not the least, on the ground that the user of the premises without the consent of the landlord had been changed.



5. Insofar as the eviction on the said ground is concerned, both Courts have concurrently allowed the eviction petition on the aforesaid four grounds.

6. In the case at hand, an issue with respect to locus standi of the landlord in maintaining the eviction petition before the learned Rent Controller had been raised. Qua the aforesaid issue, the learned Rent Controller returned a categorical finding that there exist a relationship of landlord and tenant, since the present petitioner/tenant in the case at hand was paying rent to the present respondent/landlord.

7. Insofar as the First Appellate Court is concerned, the First Appellate Court qua the relationship of landlord and tenant inter se the parties is concerned, has made a specific reference to the pleadings, wherein the landlord has categorically pleaded that after the death of Smt. Durga Devi, the tenant was paying rent to the present respondent. In this respect, the claim of the present tenant/petitioner has further been examined by the learned First Appellate Court in light of the fact wherein the tenant/petitioner has categorically claimed that Will of late Smt. Durga Devi had been shown to the tenant/petitioner and after verifying the same, the tenant/petitioner had tendered rent to the respondent/landlord. Rent receipts have been placed on record by the landlord, who appeared as PW7. From the same, it has been proved that the tenant/petitioner had tendered payment of rent with effect from November, 2001 upto October 2015.



8. Other than the aforesaid, the First Appellate Court has examined the record and has observed that one Smt. Veena Sood had questioned the title of the present respondent/landlord and in this respect had preferred an application under Order 1 Rule 10 CPC before the learned Rent Controller. However, the same was dismissed. Against the same, a revision petition bearing No.108 of 2003 had been preferred before a Coordinate Bench of this Court and the same had also been dismissed. While dismissing the same, the Coordinate Bench of this Court had observed that in the rent proceedings question of title cannot be decided.

9. Insofar as Smt. Veena Sood is concerned, in the reply filed to the eviction petition, it has been averred that the present petitioner/tenant had been inducted as a tenant by late Smt. Durga Devi. On her death, the present respondent had presented a Will dated 29.12.2005, claiming himself to be the sole successor of late Smt. Durga Devi. Smt. Veena Sood had filed a suit for permanent prohibitory injunction against the present respondent/landlord. In the suit, present petitioner has been impleaded as defendant No.2. In the written statement filed to the said suit, the present petitioner has categorically averred that based on the Will dated 29.12.2005, rent of the demised premises has been paid to the present respondent.

10. Further the First Appellate Court has observed that once the payment of rent stands proved, then the tenant/petitioner cannot raise challenge/question the title of the landlord under



the HP Urban Rent Control Act. In this respect the learned First Appellate Court has correctly place reliance on judgment of the Apex Court in ***Kanaklata Das and Ors. Vs. Naba Kumar Das and Ors., AIR 2018 SCC 682 (2018 (2) SCC 352)***.

11. In the aforesaid backdrop, the sole contention urged on behalf of the petitioner/tenant is with respect to the derivative title of the present respondent/landlord.

12. At the very outset with respect to law relating to derivative title, it would be appropriate to refer to the authoritative pronouncement of the Apex Court in case of ***Bismillah Be(Dead) by Legal Representatives Vs. Majeed Shah 2017 2 SCC 274:-***

"24. Law relating to derivative title of the landlord (Lessor) and challenge, if made, to such title by the tenant (Lessee) during subsistence of tenancy in relation to demised property is fairly well settled. Though by virtue of Section 116 of the Evidence Act, 1872, the tenant is estopped from challenging the title of his landlord during continuance of the tenancy, yet the tenant/lessee is entitled to challenge the derivative title of an Assignee/Vendee of the original landlord (Lessor) of the demised property in an action brought by the Assignee/Vendee against the tenant for his eviction from the demised property under the Rent laws. This right of a tenant is, however, subject to one caveat that the tenant/lessee has not attorned to the Assignee/Vendee. In other words, if the tenant/lessee pays rent to the Assignee/Vendee of the tenanted property then it results in creation of an attornment between the parties which, in turn, deprives the tenant/lessee to challenge the derivative title of an Assignee/Vendee in the proceedings."

This authority has been followed in a later case, ***Appollo Zipper India Limited Vs. W. Newman and Company Limited [(2018) 6 SCC 744]***. It has been held in this case:-



"42... Similarly, the law relating to derivative title to the landlord and when the tenant challenges it during subsistence of his tenancy in relation to the demised property is also fairly well settled. Though by virtue of Section 116 of the Evidence Act, the tenant is estopped from challenging the title of his landlord, yet the tenant is entitled to challenge the derivative title of an assignee of the original landlord of the demised property in an action brought by the assignee against the tenant for his eviction under the rent laws. However, this right of a tenant is subject to one caveat that the tenant has not attorned to the assignee. If the tenant pays rent to the assignee or otherwise accepts the assignee's title over the demised property, then it results in creation of the attornment which, in turn, deprives the tenant to challenge the derivative title of the landlord."

13. Other than the aforesaid, what has to be adjudicated in a rent petition has been very succinctly laid down by the Apex Court in case reported as **2018 (2) SCC 352, Kanaklata Das and Ors. Vs. Naba Kumar Das and Ors.** Relevant extract is reproduced herein below.

11. There are some well-settled principles of law on the question involved in this appeal, which need to be taken into consideration while deciding the question arose in this appeal. These principles are mentioned infra:

11.1 First, in an eviction suit filed by the plaintiff (Landlord) against the defendant(Tenant) under the State Rent Act, the landlord and tenant are the only necessary parties. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.

11.2 Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff-landlord has sought defendant's-tenant's eviction under the Rent Act exists. When these two things are proved, eviction suit succeeds.



11.3 Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See-Dr. Ranbir Singh vs. Asharfi Lal, 1995(6) SCC 580).

11.4 Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (See-Ruma Chakraborty vs. Sudha Rani Banerjee & Anr., 2005(8) SCC 140).

11.5 Fifth, a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. (See-Udit Narain Singh Malpaharia vs. Additional Member Board of Revenue, Bihar & Anr., AIR 1963 786)

11.6 Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners/landlords should join in filing



the eviction suit against the tenant. (See-Kasthuri Radhakrishnan & Ors. vs. M. Chinniyan & Anr., 2016(3) SCC 296).

14. Title is not germane for an adjudication of an eviction petition. In the case at hand, title is being claimed on the basis of Will dated 29.12.2005. Other than the aforesaid, on account of payment of rent qua the demised premises to the present respondent by the tenant/petitioner, the jural relation of landlord and tenant stands established in the case at hand.

15. Besides the aforesaid, the petitioner's/tenant's defence of derivative title in the case at hand would not survive on account of the claim of the tenant/petitioner that they had been shown the Will of late Sh. Durga Devi and after verifying it, rent was being tendered to the present respondent/landlord. In view thereof, Section 116 of the Evidence Act, 1872, becomes applicable. Moreover, in the suit filed by Smt. Veena Sood, seeking permanent prohibitory injunction against the present respondent, wherein the present petitioner is also a party, the petitioner has taken a categorical stand that rent qua the demised premises has been paid to the present respondent on the basis of Will dated 29.12.2005 shown by the present respondent, which has been duly verified. The petitioner/tenants continued payment of rent in the case at hand constitutes acknowledgement that the respondent is the landlord. This would result in creation of atonement, as held in the case of **Bismillah** (supra) and **Appollo Zipper India Limited** (supra).



16. In the aforesaid facts and attending circumstances, the judgment of the Apex Court in ***Civil Appeal No.4726 of 2010, titled Vinay Eknath Lad Vs. Chiu Mao Chen***, decided on 18.12.2019, whereupon the reliance is placed by the learned counsel for the petitioner is not applicable to the facts of the case at hand, as the same is distinguishable on facts.

17. In view thereof, I see no force in the contention of the learned counsel for the petitioner, therefore, the present petition is dismissed being devoid of merit.

Pending miscellaneous application(s), if any, shall also stand disposed of.

(Bipin Chander Negi)
Judge

27th November, 2025
(Gaurav Rawat)