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Before M.L. Singhal, J

SURINDER MOHAN AGGARWAL,—Petitioner

versus

KRISHAN MOHAN MADHOK,—Respondent

C.R. NO. 2325 OF 1993

24th August, 2000

*East Punjab Urban Rent Restriction Act, 1949—Ss.2, 3 & 13-A—Petitioner claiming ownership of the premises—Respondent inducted a tenant by co-owner—Whether petitioner can claim tenant's eviction—Held, yes—Tenant cannot challenge the title of the landlord.*

*Held*, that any of the several co-owners/co-landlords can maintain the ejectment application. So far as the petitioner is concerned though premises was not let out to the respondent by him and the premises was let out to him by a co-owner, the petitioner would also fall within the definition of the 'landlord' as given in Section 2(c) of the Act as he is also a person entitled to receive rent on his own account.

(Para 12)

Code of Civil Procedure, 1908—S.10—East Punjab Urban Rent Restriction Act, 1949—S. 14—Earlier ejectment petition on the ground of non-payment of rent and sub-letting—Respondent held to be direct tenant—Second petition u/s 13-A of the Act on the ground of personal necessity—Whether second petition barred—Held, no.

*Held*, that this application for ejectment is not barred u/s 14 of the Act. It is not barred by the principle of *res judicata*. The petitioner had raised only the plea of non-payment of arrears of rent and subletting in the previous ejectment application which was dismissed on the ground that Banarsi Dass, Advocate was not tenant inducted by him and the respondent was not sub-tenant. Respondent had rather been inducted by a co-owner of the petitioner, who was managing this property. So, the petitioner could maintain this ejectment application in his capacity as owner/landlord on the ground that he requires this property *bona fide* for his own use and occupation.

(Para 19)

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Vikas Singh, Advocate for the Petitioner

Mohan Lal Jhanji, Advocate with Kanwaljit Singh, Advocate  
for the respondent.

**JUDGMENT**

*M.L. Singhal, J.*

(1) Surinder Mohan Aggarwal (petitioner-herein) filed application under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act") against Krishan Mohan Madhok respondent for the ejection of the latter from building bearing No. B-XIX-154/A situated at Rani Jhansi Road, Civil Lines, Ludhiana which is bounded as under :-

East : Hem Raj Aggarwal

West : Street

North : Rani Jhansi Road

South : Avinash Kalia

Shown red in plan Ex.A1 attached thereto, on the allegations, that he is owner/landlord of this building. One Banarsi Dass Advocate was a tenant in a portion of the building in question at monthly rent of Rs. 550/-. He had sublet the property to the respondent. Petitioner filed application under Section 13 of the Act against Banarsi Dass on a few grounds including the ground of non-payment of rent and subletting in the year 1980 and order of ejection was passed against the respondent and Banarsi Dass by Shri SS Tiwana, Rent Controller, Ludhiana on 19th May, 1982. Krishan Mohan Madhok filed appeal which was dismissed on 7th March, 1986 by Shri R.L. Anand, Appellate Authority, Ludhiana. Krishan Mohan Madhok went in revision to the High Court, which was allowed on 19th May, 1989 and Krishan Mohan Madhok was not held to be subtenant but direct tenant and Banarsi Dass was not held to be tenant. Surinder Mohan Aggarwal petitioner has alleged in this ejection application filed in March, 1992 that Krishan Mohan Madhok has been held to be tenant in the building. The respondent is in possession of the entire building and he has been held to be tenant. He becomes tenant under the petitioner. There is thus relationship of landlord and tenant between the petitioner and the respondent. It has been further alleged that he is "specified landlord." Earlier, he was in the service of the

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government of Himachal Pradesh in the Education Department. He retired from service on attaining the age of superannuation on 31st March, 1991. At the time of his retirement from service, he was Principal of Government College, Nalagarh in Himachal Pradesh. He is entitled to receive rent in-respect of the building in question on his own account. He requires the building in question for his own use and occupation and for the use and occupation of his family as residence. After retirement, he has been putting up in the MLA quarters at Simla. Government is not permitting him to keep occupying the MLA quarters at Simla. He belongs to Ludhiana where he holds ancestral property and most of his relation, nears and dears are residing in Ludhiana. In the vicinity where this building is situated number of his close relations are residing. His family consists of his own self, his two daughters and wife. His eldest daughter is married. She often visits him with her family. His second daughter is unmarried. She has passed MBBS and is planning to start practice at Ludhiana after doing M.D. His aged father is also to put with him at Ludhiana. He wants to shift to Ludhiana alongwith his family and reside amongst his nears and dears and close relations. He has no accommodation of his own at Simla. Government is not permitting him to keep occupying MLA quarters at Simla, which he is presently occupying and proceedings for recovery of penal rent from him are pending against him at Simla. He has not vacated any accommodation at Ludhiana without any sufficient cause. He has no other accommodation at Ludhiana except the building in question. So far as respondent is concerned, he has ceased to occupy the building in question. Earlier, he was occupying the building in question. He locked it and shifted to Faridabad about 10 months ago. So far as the petitioner is concerned, he retired on 31st March, 1991 from Himachal Pradesh Government service. He has been given certificate by the Joint Secretary, Education to the Government of Himachal Pradesh showing his retirement from service w.e.f. 31st March, 1991.

(2) Respondent Krishan Mohan Madhok contested this application. It was denied that the petitioner is owner/landlord of this building. He had filed ejectment application No. 46 of 16th May, 80 against one Banarsi Dass and him alleging himself to be owner/landlord and Banarsi Dass to be tenant. It was alleged in that ejectment application that he had let out the building consisting of three rooms, one verandah, kitchen bath, electric fittings and water tap being part of this building to Banarsi Dass for a period of three months at a rent of Rs. 550 p.m. and

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Banarsi Dass had executed rent note in his favour. Banarsi Dass filed written statement admitting the claim of the petitioner. He (Krishan Mohan Madhok) appeared on 18th July, 1980 and his counsel made statement before the Court in which it was stated that he (Krishan Mohan Madhok) alongwith his son Neeraj Madhok are in possession of this building and are direct tenants under Mrs. Goma Mittal *alias* Oma Mittal wife of Dr. BK Mittal at a monthly rent of Rs. 500/-. Rent upto 29th February, 80 has been paid to Mrs. Goma Mittal *alias* Oma Mittal. Petitioner is neither the owner nor landlord of the disputed property. He (Krishan Mohan Madhok) offers rent from 1st March, 1980 to 31st May, 80 at the rate of Rs. 500/- p.m. amounting to Rs. 1500/- interest Rs. 30/-, costs Rs. 50, total Rs. 1580/- without prejudice to his rights. Rent Controller passed the following order :—

“Respondent No. 2 has tendered the amount of Rs. 1580/- after counting the same in court. Statement of the petitioner be recorded.”

(3) Petitioner's counsel made statement where through he refused to accept rent tendered by Krishan Mohan Madhok saying that he was not his tenant. Thereafter, Krishan Mohan Madhok filed written statement, in which he denied the relationship of landlord and tenant between the petitioner and Banarsi Dass urging that Banarsi Dass is a practising Advocate and is living in a big residential-cum-office building situated in Ghumar Mandi, Ludhiana for the last several years. Banarsi Dass never took this property on rent nor he ever came in possession of this property nor he ever took this property from Banarsi Dass. He denied that there was any subletting of this building by Banarsi Dass in his favour. He rather pleaded that he took this property on rent from Mrs. Goma Mittal *alias* Oma Mittal wife of Dr. BK Mittal at rental of Rs. 500/- p.m. and he further pleaded that he (Krishan Mohan Madhok) is residing in this property as tenant and he was put in possession by Mrs. Goma Mittal wife of Dr. BK Mittal, who had been realising rent from him and rent up to 29th February, 1980 stood paid to her. Rs. 1000/- on account of rent was paid to her as per cheque in the name of her son Sh. P.K. Mittal. It was also pleaded by her that the petitioner had no *locus standi* to file ejection petition as he was neither owner nor landlord.

(4) Petitioner filed replication to his written statement *inter alia* alleging and denying that he (Krishan Mohan Madhok) had taken the property on rent from Mrs. Goma Mittal *alias* Oma Mittal

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at a rental of Rs. 500/- p.m. In fact, said Mrs. Goma Mittal had nothing to do with this property. He thus denied the letting out of this property to Krishan Mohan Madhok by Goma Mittal *alias* Oma Mittal. It was denied that any rent as alleged was paid to her." Order of ejectment was passed. Appeal filed by Krishan Mohan Madhok was dismissed. Civil Revision filed by him was allowed by this Court and it was held that Krishan Mohan Madhok is a tenant under Goma Mittal *alias* Oma Mittal and the ejectment petition filed by him (Surinder Mohan Aggarwal) was dismissed. In that ejectment petition, petitioner had appeared as AW1 and had stated that he is landlord of this portion of this property which is in dispute with Banarsi Dass as tenant under him. There was thus no relationship of landlord and tenant between the parties. Petitioner cannot now approbate and reprobate inasmuch as earlier he had pleaded that Krishan Mohan Madhok was not his tenant while now he is pleading that he is tenant. In the said ejectment application, the finding on two grounds :- namely the relationship of landlord and tenant and the ownership of the petitioner had been given against the petitioner. No second ejectment petition on the ground that the petitioner is owner, as such landlord is competent. In the said ejectment petition and in replication, he had specifically stated that he was owner of the property in dispute but when he appeared in the witness box, he never stated that he was landlord nor led any evidence that he was owner. Fact that he was owner of the property was very much in issue in the said ejectment petition and he had failed lead any evidence. He cannot now reargue in this ejectment application the question of ownership. It was denied that one Banarsi Dass was tenant and that he had sublet the premises to him (Krishan Mohan Madhok). It was denied that respondent was held to be tenant in this building under the petitioner. This ejectment petition is liable to be dismissed on the short ground that it was not held by this Court that the respondent is tenant under the petitioner. Petition is barred under Section 14 of the Act and by the principle of *res judicata*. Petitioner being not the owner and the earlier petition having been dismissed on the ground that he is not owner, petitioner cannot reargue this point. Petitioner is not entitled to receive any rent he being not the landlord. It was denied that petitioner is to shift to Ludhiana. It was denied that he belongs to Ludhiana and holds ancestral property at Ludhiana. It was denied that he has no accommodation at Simla. House in dispute does not belong to the petitioner. He does not own any house at Ludhiana.

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(5) On the pleadings of the parties, the following issues were framed :-

1. Whether there is relationship of landlord and tenant?  
OPA
2. Whether the petitioner is owner of the property in suit?  
OPA
3. Whether respondent is liable to be ejected from the demised premises ? OPA
4. What is effect of earlier proceedings in between the parties? OPR
5. Relief.

(6) *Vide* order dated 1st June, 93 Rent Controller, Ludhiana dismissed this petition, in view of his finding that the petitioner was not owner of this property and further that there was no relationship of landlord and tenant between the parties.

(7) Aggrieved from this order dated 1st June, 93 of Rent Controller, Ludhiana, petitioner has come up in revision to this Court.

(8) I have heard both the sides and have gone through the record.

(9) In the earlier ejection petition [rent application No. 46 of 1980 titled *Surinder Mohan Aggarwal Vs. Banarsi Dass Advocate and K.M. Madhok* (Ex. R2)] Surinder Mohan Aggarwal had sought ejection of Banarsi Dass Advocate and KM Madhok from the portion of the building No. B-XIX/154-A situated at Maharani Jhansi Road, Ludhiana on the allegations that he is owner/landlord of the building in dispute. Shri Banarsi Dass Advocate took the building consisting of three rooms, one verandah, Kitchen, bath etc. shown red in the plan. Part of the building in dispute shown red in the plan attached thereto and bounded as under :—

East : Mr. Kalia  
West : Road  
North : Hem Raj

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South : Road

at a rental of Rs. 550 p.m. excluding electricity and water charges. He was not authorised to sublet or transfer the possession thereof to any one. He was required to deliver vacant possession to him after the expiry of three months period. He executed rent note in his favour. He sublet the premises and transferred possession thereof to Krishan Mohan Madhok without his written consent. In reply to the said ejection application, Krishan Mohan Madhok urged that Banarsi Dass was never a tenant of the premises. He never took possession of the premises. He never put him into possession of the premises. It was urged that there is no relationship of landlord and tenant between him (Krishan Mohan Madhok) and Banarsi Dass. He was never inducted as tenant to the premises by Banarsi Dass. In fact, he took the premises on rent from Mrs. Goma Mittal *alias* Oma Mittal wife of Dr. B.K. Mittal at a rental of Rs. 500. He was in occupation of the premises as tenant inducted by Smt. Goma Mittal *alias* Oma Mittal at a rental of Rs. 500 p.m. He was put in possession of the demised premises by Smt. Goma Mittal *alias* Oma Mittal. It was further urged that Surinder Mohan Aggarwal had no *locus standi* to claim his ejection as he was neither owner nor landlord of the premises. In nut-shell, he pleaded tenancy of the premises under Smt. Goma Mittal *alias* Oma Mittal wife of Dr. BK Mittal and refuted the claim of Surinder Mohan Aggarwal that Banarsi Dass was tenant while he was subtenant inducted by Banarsi Dass Advocate to the premises. The said ejection petition was accepted by the Rent Controller,—*vide* order dated 19th May, 1982 Ex. AX. Appeal of Krishan Mohan Madhok was dismissed by the Appellate Authority. Revision filed by Krishan Mohan Madhok was allowed by this court *vide* order Ex. R7 dated 19th May, 89, in view of its finding, "that Banarsi Dass was never inducted as tenant to the premises by Surinder Mohan Aggarwal and Banarsi Dass Advocate never occupied this premises and he never inducted Krishan Mohan Madhok to the possession of the premises as his sub tenant. It was found that Krishan Mohan Madhok was inducted as tenant by Smt. Goma Mittal *alias* Oma Mittal and that he had paid rent to her through cheque drawn in the name of her son. Smt. Goma Mittal *alias* oma Mittal may not be the owner but she could be landlord. A landlord may not necessarily be the owner. Any person who is entitled to receive rent in respect of any building on his own account or on behalf of or for the benefit of any other, is a landlord. Smt. Goma is not a stranger to the family. Smt. Goma may be managing the property and in her capacity as such rented out the

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same. Smt. Goma had received rent through cheque drawn in the name of her son. The acceptance of rent is a strong evidence of creation of tenancy unless rebutted. From the circumstances, it can also be inferred that Smt. Goma *alias* Oma Mittal was managing the property. She leased out the same to Krishan Mohan Madhok and had been collecting rent from him. It was thus held that Krishan Mohan Madhok was a tenant inducted by Smt. Goma Mittal *alias* Oma Mittal, who was managing the property and that Banarsi Dass was never inducted as tenant to the premises by Surinder Mohan Aggarwal and that the alleged tenancy created under memorandum of lease was a sham transaction. Plea of Banarsi Dass that he had handed over the possession to Krishan Mohan Madhok remained unsubstantiated.”

(10) It was after the revision petition filed by Krishan Mohan Madhok had been allowed by this court,—*vide* order Ex. R7, dated 19th May, 89 that Surinder Mohan Aggarwal filed instant ejectment application on 10th March, 92 under Section 13-A of the Act as “specified landlord” on the allegations that he is owner/landlord while Krishan Mohan Madhok is a tenant. Earlier ejectment petition was one under Section 13 simplicitor of the Act which was dismissed by this Court on the finding that there was no relationship of landlord and tenant between him and Banarsi Dass and Banarsi Dass was never inducted as tenant by Surinder Mohan Aggarwal and further Banarsi Dass never inducted Krishan Mohan Madhok to the premises as his sub tenant and that Krishan Mohan Madhok was a tenant inducted by Smt. Goma Mittal *alias* Oma Mittal. In the present ejectment petition, Surinder Mohan Aggarwal can succeed only if he is able to prove that he is the owner of the premises. He can succeed if he is able to prove his ownership of the premises may be that Krishan Mohan Madhok was inducted as tenant by Smt. Goma Mittal. A landlord as defined in Section 2 of the Act can file ejectment application against tenant. A “landlord” may not necessarily be “owner.” Any person who is entitled to receive rent in respect of any building on his own account or on behalf of or for the benefit of any other person, is a landlord. Smt. Goma Mittal *alias* Oma Mittal could undoubtedly file an ejectment petition against tenant Krishan Mohan Madhok. Ejectment application filed by Surinder Mohan Aggarwal will also be competent if he is able to prove that he is owner of the premises and that Krishan Mohan Madhok is a tenant. It was held in *Smt. Parkash Wati Vs. Karnail Singh and anr.*, (1) that

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(1) 1991 (2) RCR 92



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“where premises are let by a person other than owner, application for ejectment by owner is maintainable,” In *Smt. Parkash Wati's case (Supra)*, reliance was placed upon *Smt. Ram Piar Vs. M/s Delhi Fruit Company etc., (2)*. Karnail Singh was inducted as tenant by Smt. Parkash Wati's husband Daljit Singh. Daljit Singh was thus landlord. Ejectment petition was filed by Smt. Parkash Wati against Karnail Singh for his eviction. She was sought to be non-suited on the ground that there was no relationship of landlord and tenant between her and Karnail Singh. Ejectment petition was found to be maintainable by her as she was the owner while her husband was the landlord.” In my opinion, ejectment application is maintainable by Smt. Goma Mittal against the tenant. Ejectment application is also maintainable by the owner also in view of the definition of the “landlord” as given in Section 3 of the Act. In this case, therefore, the focus will be on determining the question “whether Surinder Mohan Aggarwal is owner of the premises and if he is found to be owner of the premises, he will automatically be “landlord” as defined in Section 3 of the Act. Surinder Mohan Aggarwal AW1 has stated that he is owner of this property. This property devolved upon him through will executed by his mother Smt. Shakuntla. Smt. Shakuntla had got this property from her father Seth Raja Ram. There was family partition among the heirs of Seth Raja Ram and this property fell to the share of his mother Smt. Shakuntla Aggarwal. This property was mutated in the name of his mother Smt. Shakuntla,—*vide* mutation Ex.A2. In jamabandi Ex. A3 for the year 1973-74, this property is shown to be in his name. In jamabandi for the year 1988-89 Ex. A4 this property is shown in his name. In Ex.AW4/1, which is house tax bill for the year 1981-82, property No. B-XIX/154-A is shown in the name of Smt. Shakuntla Devi. In house tax bills for the years 1983-84, 1984-85 and 1985-86, property No. B-XIX/154-A is shown in the name of Smt. Shakuntla Devi. Surinder Mohan Aggarwal AW1 stated that prior to the family partition, there were quarters in this land. After this land had fallen to the share of his mother, they raised construction and made it residential property. It was allotted No. B-XIX/154-A by the Municipal Committee, Ludhiana. His mother had executed will in his favour in the year 1978 which was attested by his father Hans Raj Aggarwal and brother K.K. Aggarwal and the photo copy of which is mark A. He stated that this property devolved on him from his mother through Will Ex. AW3/i. After the death of his mother, he exercised the rights of ownership so far as this property is concerned. Municipal

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Committee has been sending him house tax bill at his Solan address. Those bills used to be in the name of his mother but payment of these bills used to be made by him. House tax bills mark C to F and the payments made by him were made through mark G and H. he stated that none of his brothers and sister are challenging his ownership to the property. This property was mutated in his name in the year 1979 through mutation. He requested Municipal Committee, Ludhiana to record his name in the record of ownership maintained by it and it started sending him house tax bills. Smt. Om Kumari Mittal wife of Dr. B.K. Mittal AW2 stated that Surinder Mohan Aggarwal is the son of her husband's sister. This premises was owned by Surinder Mohan Aggarwal. It devolved upon him through Smt. Shakuntla. Earlier, this property had fallen to the share of Smt. Shakuntla at family partition between her, her brothers and sister. After the death of Smt. Shakuntla, this property devolved upon Surinder Mohan Aggarwal. Karun Kumar AW3 stated that this property was earlier under the ownership of his mother Smt. Shakuntla Devi. She got this property at family partition between her brothers and sister. Smt. Shakuntla Devi willed away this property in favour of Surinder Mohan Aggarwal,—*vide* Will, the photostat copy of which is Ex.AW3/1. This property was mutated in the name of Surinder Mohan Aggarwal on the basis of Will. Karun Kumar Aggarwal is one of the attesting witnesses to this will. Execution of Will by Smt. Shakuntla Devi in favour of Surinder Mohan Aggarwal stands proved. Sushil Kumar, who is House Tax Clerk in Municipal Committee, Ludhiana AW4 stated that in the house tax record, this house is shown in the ownership of Smt. Shakuntla Devi. Neeraj Madhok son/attorney of Krishan Mohan Madhok stated that this property was tenanted by his father at a rental of Rs. 500/- p.m. in April 1979 from Smt. Goma Mittal *alias* Oma Mittal and that Smt. Goma Mittal had been receiving rent. Surinder Mohan Aggarwal is not landlord. They do not acknowledge Surinder Mohan as owner. They do not accept him landlord.

(11) Learned counsel for the petitioner submitted that petitioner Surinder Mohan Aggarwal is the owner of the premises on the basis of the Will and Smt. Goma Mittal was the landlord. It was submitted that vis-a-vis tenant, he (Surinder Mohan Aggarwal) was not required to prove ownership in absolute terms. Question of title has to be found in the light of the fact that tenant is never a rival claim of title. In support of this submission, he drew my

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attention to *Smt. Parvati Devi Vs. Mahindra Singh*, (3) where it was held that "for purposes of ejection, the ownership has not to be proved in absolute terms. Question of title has to be viewed in the light of the fact that tenant is never a rival claimant of title."

(12) In *Smt. Parvati Devi's* (Supra), the plea of the tenant was that one Billo is the owner of the premises. It was proved in evidence on record that this person Billo is the son of *Smt. Parvati Devi* landlady. His real name is Chander Mohan. Chander Mohan appeared as a witness in his capacity as son of *Smt. Parvati Devi* as well as her general attorney and has specifically stated that *Smt. Parvati Devi* is the owner of the property and he was only managing the property on her behalf. Statement of Chander Mohan read in the light of the plea of the respondent that the owner of the property is Billo (Chander Mohan) is sufficient for holding that the petitioner is the owner of the property and not Billo, *alias* Chander Mohan. So, strict proof of the Will was not required to have been given. Strict proof of the Will was required had the contest been between Surinder Mohan Aggarwal on the one hand and the other natural heirs of *Smt. Shakuntla Devi* on the other hand. Even otherwise, if this ejection application succeeds the ejection order can enure in favour of all the heirs of *Smt. Shakuntla Devi*. In the alternative, learned counsel for the petitioner submitted that assuming there was no Will by *Smt. Shakuntla Devi* in favour of Surinder Mohan Aggarwal, Surinder Mohan Aggarwal could still maintain ejection application as he was one of co-owners. Any of the co-owners could ask for the ejection of the tenant. It was held in *S.C. Leekha Vs. Mohinderjit Singh*, (4) that "where the family partition had taken place between the co-owners and the demised premises alongwith some other property had fallen to the share of the landlord, tenant cannot challenge the validity of the family partition in the summary proceedings for ejection initiated by the landlord." It was held in *Mathra Das Vs. Smt. Ram Piari*, (5) that "even one of the many co-landlords can singly maintain ejection application against tenant." *Mathra Dass* petitioner admittedly was one of the co-owners of the demised premises. He preferred ejection application under Section 13 of the Act before Rent Controller, Fazilka. It seems manifest from the definition of the "landlord" as given in the Act that the definition is a wide ranging one including within its sweep a number of persons.

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(3) 1996 (1) All India Rent Control Journal 583

(4) AIR Commandore (1998—3) PLR 79

(5) 1982 (1) All India Rent Control Journal 447

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Particularly noticeable is the fact that the landlord under the Act is not necessarily confined to the owner or the owners of the building. Persons who may lay no claim of title to the property would nevertheless come within the wide amplitude of the definition. Equally patent it is that the statute herein does not necessarily visualise a single landlord but also a plurality thereof. In *Sri Ram Pasricha V. Jagannath and others*, (6) it was held that "jurisprudentially it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part of owner or a fractional owner of the property. The position will change only when partition takes place. It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of section 13 (1) (f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of section 13 (1) (f) as long as he is a co-owner of the property being at the same time the acknowledged landlord of the defendants. "In *Ram Piari Vs. Dr. Kesho Ram*, (7) also it was held that "one of the many co-owners can maintain eviction application." It was held that "the absence of other co-owners on record does not entitle from issuing for eviction. It would thus emerge that any of the several co-owners/co-landlords can maintain the ejection application. So far as Surinder Mohan Aggarwal is concerned though premises was not let out to Krishan Mohan Madhok by him and the premises was let out to Krishan Mohan Madhok by Smt. Goma Mittal *alias* Oma Mittal, he would also fall within the definition of the "landlord" as given in Section 2 (c) of the Act as he is also a person entitled to receive rent on his own account. Smt. Goma Mittal is also "landlord" entitled to receive rent on behalf or for the benefit of Surinder Mohan Aggarwal (if he alone is the owner) or for the benefit of Surinder Mohan Aggarwal and others the co-owners. She would be a trustee qua the amount of rent received by her from Krishan Mohan Madhok qua the owner/co-owners.

(13) In pith, the submission made by the learned counsel for the petitioner was that Surinder Mohan Aggarwal was competent to maintain ejection application for the ejection of Krishan Mohan Madhok, "Whether he alone was the owner or he was one of the several co-owners."

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(6) AIR 1976 SC 2335

(7) 1980 (2) RCR 137

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(14) Learned counsel for the petitioner submitted that Surinder Mohan Aggarwal should be viewed as owner as he stood recorded in the record of rights as owner to which presumption of truth attaches. It was also submitted that Smt. Shakuntla Devi was recorded as owner in the house tax record of Municipal Committee, Ludhiana and that house tax bills had been sent to Surinder Mohan Aggarwal at his Solan address and he had made payments thereof. In support of this submission that where a person is recorded as owner in the Municipal house tax record, he should be taken to be owner, he drew my attention to *Jagan Nath Vs. Smt. Shanti Devi*. (8)

(15) Learned counsel for the respondent, on the other hand, submitted that in the ejectment application and the site plan, no khasra number has been mentioned. Property has been described only by municipal number namely B-XIX/154-A Maharani Jhansi Road, Ludhiana. It was submitted that petitioner Surinder Mohan Aggarwal has made no effort to connect property No. B-XIX/154-A Rani Jhansi Road, Ludhiana with the property shown in mutation Ex.A2 in the name of Smt. Shakuntla Devi or the record of rights. In Ex.A3 and Ex.A4, the property has been shown bearing khasra No. 1665/1220/668/532/467/3/8 (3-B 12-B). It was submitted that in the mutation and the record of rights the property is shown to be situated in Taraf Gahlewal Hadbust No. 166, Tehsil and District Ludhiana. Suffice it to say, in his written statement, Krishan Mohan Madhok has no where disputed the identity of the property. All that, he has stated is that Surinder Mohan Aggarwal is not the owner/landlord of the premises No. B-XIX/154-A Rani Jhansi Road, Ludhiana. In fact, he is tenant inducted to this premises by Smt. Goma Mittal alias Oma Mittal. There is no relationship of landlord and tenant between him and Surinder Mohan Aggarwal. In the earlier ejectment application, he had pleaded that he is not sub-tenant inducted by Banarsi Dass but a tenant inducted by Goma Mittal *alias* Oma Mittal. In the written statement filed in the earlier ejectment petition, he had stated that he is occupying entire building NO. B-XIX/154-A Maharani Jhansi Road, Ludhiana as a tenant inducted by Smt. Goma Mittal *alias* Oma Mittal. He is, thus, tenant of the premises in dispute inducted by Smt. Goma Mittal. Smt. Goma Mittal AW2 has no where stated that she is owner of this premises. She has rather stated that Surinder Mohan Aggarwal is the owner of this premises which devolved upon him from his mother. In this case, thus

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Surinder Mohan Aggarwal was not required to show that this premises was no other than Khasra No. 1665/1220/668/532/467/3/8 Taraf Gahlewal Hadbust No. 166, Tehsil Ludhiana.

(16) Learned counsel for the respondent submitted that Surinder Mohan Aggarwal has nowhere stated that Smt. Goma Mittal inducted Krishan Mohan Madhok to this property as tenant. He has stated that he inducted Banarsi Dass Advocate to this premises as tenant and Banarsi Dass Advocate inducted Krishan Mohan Madhok to this premises as sub tenant. Smt. Goma Mittal AW2 has stated that she never inducted Krishan Mohan Madhok to this premises as tenant. Krishan Mohan Madhok never paid her rent. He never paid rent to her husband. He never paid rent to her son. She has stated that the tenant was inducted to this premises by Surinder Mohan Aggarwal himself. It was submitted in the face of what they have stated the Court cannot make out a case for him (Surinder Mohan Aggarwal) that Smt. Goma Mittal inducted Krishan Mohan Madhok as tenant to this premises and that he can claim his ejection in his capacity as owner/landlord. In my opinion, this submission made by the learned counsel for the respondent is misconceived. Surinder Mohan Aggarwal has all along pleaded that he inducted Banarsi Dass Advocate as tenant to this premises at a rental of Rs. 550/- p.m. and that Shri Banarsi Dass Advocate inducted Krishan Mohan Madhok as sub tenant to this premises. It was in view of the finding of this court recorded in CR Ex. R7 decided on 19th May, 1989 that Krishan Mohan Madhok is a tenant inducted by Smt. Goma Mittal who was managing the property and collecting rent from him and that he had never been inducted by the alleged tenant Banarsi Dass Advocate sub tenant that he (Surinder Mohan Aggarwal) had to file this ejection petition against Krishan Mohan Madhok. He filed this ejection petition accepting the findings of this court recorded in the said revision on 19th May, 1989. How could he depart from the case which he set out originally? If he had departed from the case set up by him originally that would have been blowing hot and cold by him in the same breath. Learned counsel for the respondent submitted that the factum of family partition between the children of Raja Ram Aggarwal could not have been relied upon when the writing dated 24th May, 1973, which finds mention in mutation Ex. A2 was not produced by Surinder Mohan Aggarwal. Suffice it to say, production of that writing became meaningless when the mutation was entered and sanctioned in the name of the children of Raja Ram Aggarwal. On the mutation, Tartima was drawn up showing the portions of the property which had fallen to

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the share of each of the children of Raja Ram Aggarwal. Learned counsel for the respondent submitted that no value can be attached to the house tax record of the Municipal Committee so far as ownership is concerned. Suffice it to say, the house tax record is not meaningless. Only he is liable to pay house tax who is owner of the property. Liability to pay house tax is that of the owner. Entry in house tax record is not evidence of title *stricto sensu* but it can be taken into account to find out who is owner coupled with the other evidence.

(17) There can be thus no manner of doubt that Surinder Mohan Aggarwal is the owner of this property. He is "landlord" of the premises as defined in Section 2 (c) of the Act. Assuming that he is not the only owner, he is one of several co-owners being one of the heirs of Smt. Shakuntla Devi, as co-owner also, he could maintain this ejection application for the benefit of his own self and for the benefit of the other co-owners/landlords.

(18) Surinder Mohan Aggarwal requires this premises *bonafide* for his own use and occupation and for the use and occupation of his family. There is no evidence that he owns any other house at Ludhiana, which he can occupy. There is no evidence that he has vacated any other house at Ludhiana. He retired from the service of Himachal Pradesh Government on 31st March, 1991. There is a certificate to this effect Ex. A5 issued by Joint Secretary, Education Government of Himachal Pradesh that he retired on superannuation on 31st March, 1991. There is no evidence that he has any accommodation in Himachal Pradesh, which he can keep occupying in his own right. Assuming that he has some accommodation in Himachal Pradesh which he can occupy in his own right, he cannot be compelled by the tenant to keep occupying that accommodation in Himachal Pradesh and not look to this accommodation situated at Ludhiana and reside among his relations. In old age one looks to his relations for socialising and other needs. In Himachal Pradesh after retirement, he will be feeling like a fish out of water. The landlord is the sole arbiter of his choice. It is for the landlord to choose where he will put up. It is not for the tenant to impose upon the landlord his choice. Rent Controller cannot interfere with the choice of the landlord if the same is *bona fide*. In this case, there is no evidence to suggest that the choice of Surinder Mohan Aggarwal for this premises is not *bona fide*.

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(19) This application for ejectment is not barred under Section 14 of the Act. It is not barred by the principle of *res judicata*. He had raised only the plea of non payment of arrears of rent and subletting in the previous ejectment application which was dismissed on the ground that Banarsi Dass Advocate was not tenant inducted by him and Krishan Mohan Madhok was not sub tenant inducted by Banarsi Dass Advocate. Krishan Mohan Madhok had rather been inducted by Smt. Goma Mittal *alias* Orna Mittal, who was managing this property. So, Surinder Mohan Aggarwal could maintain this ejectment application in his capacity as owner/landlord on the ground that he requires this property *bona fide* for his own use and occupation and for the use and occupation of his family, Surinder Mohan Aggarwal is entitled to the ejectment of Krishan Mohan Madhok from the premises shown in site plan Ex. A1 notwithstanding that he had not shown the entire premises in the earlier ejectment application because it was not he who had inducted Krishan Mohan Madhok to this premises but he had been inducted by Smt. Goma Mittal and it was known to her the extent of premises to which he had been inducted by her.

(20) For the reasons given above, this revision succeeds and is accepted. Respondent is ordered to be ejected from the premises described in this ejectment petition and shown in site plan Ex. A1 attached thereto. Order of Rent Controller declining this ejectment application is set aside. Respondent is allowed three months time to vacate this premises and put Surinder Mohan Aggarwal owner/landlord in vacant possession thereof. Parties shall bear their own costs throughout.

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**S.C.K.**

*Before M.L. Singhal, J*

PUNJAB NATIONAL BANK & ANOTHER—*Petitioners*

*versus*

GURWANT SINGH—*Respondent*

C.R. NO. 3039 OF 1994

14th August, 2000

*Code of Civil Procedure, 1908—Punjab National Bank Officers Employees Discipline and Appeal Regulations, 1977—Dismissal from service of a Bank employee—Employee challenging his dismissal in Civil Court—Whether Civil Court has jurisdiction—Held, yes.*