

Gurdev Singh

Vs

Surjit Kumar Alias Jit and Another

Civil Appeal No. 7792 of 1996

(Kuldip Singh, K. Venkataswami JJ)

01.05.1996

JUDGMENT

K. VENKATASWAMI, J.-

1. Leave granted.

2. Heard counsel.

3. The first appellant is recorded to be dead. His LRs are prosecuting this appeal. The deceased appellant filed an ejectment application against the respondents herein on the grounds that the first respondent has sub-let the suit premises to the second respondent without a written consent; that the suit house is in a dilapidated condition and therefore, unfit and unsafe for human habitation; that the house was required for his personal use and occupation after reconstruction thereof and that the respondent had not paid the rent since May 1985 onwards. The first respondent remained ex parte. The second respondent opposed vehemently the ejectment application. The contention of the second respondent was that he was the direct tenant and the grounds in support of ejectment application were wholly untenable and the application itself was liable to be dismissed. The learned Rent Controller accepting the case of the second respondent dismissed the ejectment application. On appeal by the deceased first appellant, the appellate authority also concurred with the Rent Controller and consequently dismissed the appeal. On further revision, the High Court dismissed the revision in limine. Hence the present appeal by special leave has been preferred by the landlord.

4. When the Special Leave Petition No. 23300 of 1995 came up for orders on 30-10-1995, this Court passed the following order:

"Mr D. V. Sehgal, the learned Senior Advocate for the petitioner says that Gurdev and his wife both have retired from service in Canada. They have taken a decision to come back to India and reside in the house.

Keeping in view this subsequent development, issue notice returnable in 12 weeks. Dasti process in addition."

5. As noticed at the beginning, the first appellant died after filing the special leave petition. The application for substitution was allowed. On the basis of subsequent event, the widow of the deceased first appellant has stated that after the death of her husband she has "permanently come back to India and needs the house in question for her personal residence". In the normal circumstances in view of the settled position of law that subsequent events have to be taken note of,

we would have allowed the ejection application accepting the statement of the second appellant (widow of the first appellant). However, the second respondent has filed an affidavit seriously challenging the statement of the second appellant by stating as follows:

"The widow Smt Surjit Kaur came to India for a few days to perform the last rites of her deceased husband/petitioner and had gone back and this opportunity she chose to file the present false affidavits."

6. Further, the learned counsel appearing for the second respondent in his written submissions has raised the following objection:

"That even if it is presumed that new facts have been placed on record, which is very much denied, but by no stretch of imagination, it has been laid by any court that new facts can be assumed to be correct without trial. The LRs or the widow have to prove the new facts before the trial court."

7. It is also objected to on the ground that the LRs and/or the widow have to prove and satisfy the ingredients of law viz. Section 13(3) (a) (1) (b) of the Punjab Rent Restriction Act.

8. In the circumstances, we feel that the ends of justice will be met if the case is remanded back to the appellate authority to enable the LRs of the first appellant to establish their claim for ejection under the present circumstances in the light of the abovesaid provision of law.

9. Accordingly, the orders of the High Court and the appellate authority are set aside and the appellate authority will restore on its file the rent appeal and dispose of the same in accordance with law. It will be open to the appellate authority to permit the parties to file additional pleadings and adduce oral evidence.

10. The appeal is disposed of accordingly. There is no order as to costs.