

every landlord which comes within the ambit of law to recover the arrears of rent from a tenant when rent has been paid to one of them for a particular period, validly.

(9) Lastly, it was contended by the learned counsel for the plaintiff-respondent that this being a revision, and its scope being limited, no interference be caused in the judgment and decree of the lower appellate Court. It goes without saying that when there is an error apparent on the face of the record, and a material irregularity in the exercise of jurisdiction, this Court can interfere under section 115, Civil Procedure Code. It hardly needs to emphasise that the errors pointed out heretofore were apparent on the face of the record and the jurisdiction exercised was materially irregular in permitting the suit of the plaintiff-respondent to be instituted and continued in the presence of the rent already having been paid by the defendant-petitioner to the landlord holding title to the property.

(10) For the foregoing reasons this petition is allowed, the judgment and decree of the lower appellate Court is set aside and the plaintiff's suit is dismissed with special costs, for which the second issue was framed, and which are assessed at Rs. 500. In addition to that, the defendant-petitioner will get costs in this revision petition.

N.K.S.

*Before J. V. Gupta, J.*

CHAMAN LAL AND OTHERS,—*Petitioner.*

*versus*

INDIRA WATI,—*Respondent.*

*Civil Revision No. 1959 of 1983.*

August 13, 1984.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Landlady filing application for eviction of tenant on the ground of personal necessity—Court finding that landlady only a benamidar while the real owner being the husband of the said landlady—Eviction application—Whether competent—Ostensible owner of the property—Whether entitled to seek eviction.*

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*field*, whether the transaction of sale in favour of the landlady was a *benami* or not, was to be considered only to find out the landlady's *bona fide* requirement of the demised premises. Even if the said landlady was the ostensible owner of the property even then there was nothing wrong to hold that the requirement was not *bona fide*. Besides, it cannot be said that an ostensible owner is not entitled to seek ejectment of the tenant. As a matter of fact, the jurisdiction of the authority under the East Punjab Rent Restriction Act, 1949 is very limited. Under the said Act, a tenant is liable to be ejected from the premises if the landlord satisfies the statutory conditions for the eviction of the tenant therefrom. In this view of the matter, an application for eviction filed under section 13 of the East Punjab Urban Rent Restriction Act is maintainable even on behalf of the ostensible owner.

(Paras 3 & 5).

*Petition for revision of the order of Shri M. L. Singal, Appellate Authority, Hoshiarpur, under the East Punjab Urban Rent Restriction Act, 1949, dated June 7, 1983, reversing that of Shri G. L. Chopra, Rent Controller, Hoshiarpur, dated 29th November, 1980 accepting the application of ejectment instituted by Indira Wati and passing an order of ejectment against Chaman Lal and others from the entire ground floor of the building.*

Ashok Bhan, Senior Advocate (Ajay Kumar Mittal, Advocate with him),—for the Petitioner.

R. L. Sarin, Advocate, for the Respondent.

### JUDGMENT

*J. V. Gupta, J.*

(1) This is a tenants' petition against whom the ejectment application was dismissed by the Rent Controller, but allowed in appeal.

2. Indirawati, wife of Mehar Chand, the landlady and the owner of the ground floor, i.e., the demised premises, sought the ejectment of the tenants, who are the heirs and the legal representatives of the original tenant, Charan Dass, since deceased. The building is a four storeyed house situated in Mohalla Misran, Hoshiarpur. Only the ground floor thereof was let out to the tenant which was purchased by the landlady from the original owner and the landlord on March 25, 1977. The other portions of the said building i.e., the first floor and the second floor etc. were also purchased by Amrit Lal, the son of the landlady by a separate sale deed. The ejectment of the tenants was sought primarily on the ground that she *bona fide*

required the premises for her own use and occupation. It was pleaded that previously her husband was in occupation of the residential house situated in Gali No. 18, Kamalpur, Hoshiarpur and she was residing with him there. However, the landlord of the said house got the same vacated and consequently, she purchased the demised premises, i.e., the ground floor of the said building for her own use and occupation. It was also pleaded that she and her husband were residing with their son Amrit Lal with his permission. She or her husband had not been occupying any other residential house in the urban area concerned, nor had they vacated any after the commencement of the East Punjab Urban Rent Restriction Act. It was also pleaded that the premises shown in the green colour in the plan, Exhibit A. 3, were insufficient for her requirement and for the requirement of her husband and children. The eviction application was contested *inter alia* on the ground that, in fact, Mehar Chand, the husband of the landlady was the owner of the entire building comprising the ground floor; first floor; second floor and the third floor and that the landlady was only a *benami* owner of the ground floor. Similarly, Amrit Lal was only a *benami* owner of the other portion. According to the tenants, Mehar Chand did not purchase the entire building as he might not have been able to get the tenants on the ground floor evicted. Thus, according to them, the requirement of the landlady was not *bona fide*. She was comfortably living with her husband on the first floor along with her son Amrit Lal. On trial the learned Rent Controller found that the landlady whose name was incorporated in the sale deed, Exhibit A. 1, was a *benamidar* and that the real owner of the demised premises was Mehar Chand, her husband. Thus, he was a necessary party and, in fact, the eviction application should have been brought by him. In view of this finding, it was held that the *bona fides* of the landlady in bringing the ejection application were not established. Consequently, the ejection application was dismissed. In appeal, the learned Appellate Authority came to the conclusion that even if it be assumed that Mehar Chand was the real owner and Indirawati was a *benamidar*, even then, their need of the demised premises was *bona fide* as they could not be tagged with their son, Amrit Lal for all times to come. It was also observed that if they choose to live apart from their son independently in a separate accommodation, there was no reason why they should be denied that right to live apart from their son independently in a separate accommodation. In this view of the matter, the eviction order was passed against the tenants. Dissatisfied with the same, the tenants have come up in revision to this Court.

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3. The main argument raised on behalf of the petitioners is that having been found that Indirawati, landlady was only a *benamidar* and the real owner was her husband Mehar Chand, no ejection order could be passed in her favour. According to the learned counsel, on this ground alone, the ejection application was liable to be dismissed. In support of the contention the learned counsel relied upon *Jagjit Lal V. Gurjinder Singh Arora*, (1).

4. After hearing the learned counsel for the parties, I do not find any merit in this petition.

5. Whether the transaction of sale in favour of Indirawati, landlady, was a *benami* or not, was to be considered only to find out her *bona fide* requirement of the demised premises. In the present case as to whether Amrit Lal was also a *benamidar* with regard to the other portions of the building was irrelevant because that was not the subject-matter of the dispute. The demised premises are the ground floor only. Even if it be assumed for the sake of arguments, though the Appellate Authority has firmly held and rightly, that Indirawati was the real owner of the demised premises, that she was the ostensible owner thereof, even then, there was nothing wrong to hold that her requirement was not *bona fide*. The approach of the learned Rent Controller, in this behalf was wholly misconceived whereas the Appellate Authority, as observed earlier, has rightly come to the conclusion that even if it be assumed that Mehar Chand was the real owner of the building, even then, the requirement of the landlady was *bona fide* because she and her husband Mehar Chand could not be forced to live with their son Amrit Lal. The judgment of this Court in *Jagjit Lal's case* (supra), relied upon by the learned counsel for the petitioners is of no help to their case as it has no applicability to the facts of the present case. Besides, it was nowhere held therein that an ostensible owner was not entitled to seek ejection of his tenant. As a matter of fact, the jurisdiction of the authorities under the East Punjab Urban Rent Restriction Act is very limited. Under the said Act, a tenant is liable to be ejected from the premises if a landlord satisfies the statutory conditions for the eviction of the tenant therefrom. Viewed from any angle, the Appellate Authority has rightly come to the conclusion that even if it be assumed that the real owner was Mehar Chand, the husband of the landlady, even then the landlady's requirement was *bona fide*. Any further enquiry was irrelevant so

(1) 1977 P.L.R. 124.

far as the jurisdiction of the authorities under the above-said Act is concerned. Moreover, any observations in these proceedings do not make Mehar Chand, the husband of the landlady, the owner of the building. The enquiry in this behalf was only directed for a limited purpose to find out if the sale deed was executed in favour of Mehar Chand could he claim ejection of the tenants on the ground of the *bona fide* requirement of the demised premises, and it was rightly observed by the Appellate Authority that he could do so in the present case.

6. No other point arises, nor has been raised.

7. Consequently, this petition fails and is dismissed with costs. However, the tenants are allowed two months' time to vacate the premises; provided all the arrears of rent, if any, and the advance rent for two months are deposited with the Rent Controller within one month.

H.S.B.

Before M. M. Punchhi, J.

DHAN SINGH AND ANOTHER,—Petitioners.

versus

STATE OF HARYANA AND ANOTHER,—Respondents.

Criminal Misc. No. 3641-M of 1984.

September 18, 1984.

*Haryana Children Act (XIV of 1974)—Sections 2(h) and 27—Accused charged with murder—Children Court conducting inquiry into the age of the accused without associating the complainants—Section 27—Whether visualises the association of the said complainants with the inquiry—Order passed without associating the complainants—Whether liable to be quashed.*

*Held, that a Children Court in relation to delinquent children comes within the compass of "competent authority" as defined under section 2(h) of the Haryana Children Act, 1974. Section 27 thereof requires that save as provided in the said Act, no person shall be present at any sitting of a competent authority, except—(a) an officer of the competent authority, or (b) the parties to the inquiry before the competent authority, the parent or guardian of the child and other persons directly concerned in the inquiry including police officers;*