

Before Rajan Gupta, J.

SUDEEP KAUR—Petitioner

versus

BALWANT SINGH CHHABRA & ANOTHER—Respondents

CR No.6787 of 2010

January 11, 2013

Constitution of India, 1950 - Art. 227 - Code of Civil Procedure 1908 - O.1 Rl.10 read with S.151 - The East Punjab Urban Rent Restriction Act - S.15(5) - Petitioner is the divorced wife of tenant who moved an application before Rent Controller for being impleaded as respondent - Petitioner submitted that she and her children were living in tenanted premises, and as such, had a right to defend even in the absence of her divorced husband - Trial court dismissed the application - Order challenged - Terms of settlement during the matrimonial proceedings did not talk of residence - Petitioner is not a necessary party - There is no privity of contract between the petitioner and the landlord - Revision petition dismissed.

Held, that A perusal of the aforesaid decree shows that there is no settlement as regards residence to be provided to the petitioner. It merely states that both the parties have settled their dispute regarding dowry

articles, Istridhan, permanent alimony and custody of children. There is no reference, whatsoever, to the right of residence in the demised premises or respondent No.2 having parted with tenancy rights. Even statements of both the parties recorded on 3.2.2005, which have been placed on record, have been perused. Same also refer only to permanent alimony, dowry articles, custody of children etc. There is no reference, whatsoever, to the demised premises. In such circumstances, I am of the considered view that ratio of judgments in B.D. Achala's case (supra) and Ruma Chakraborty's case (supra), would be applicable. The petitioner having been divorced by way of decree dated 3.2.2005, matrimonial relationship between her and her husband stands terminated. Terms of decree do not show that any provision was to be made by the husband for residence of divorced wife. The tenancy subsisted between landlord and husband of the petitioner. Her marriage having been dissolved, she has lost the right to stay in the matrimonial home. As already observed, there is no mention in the decree of any right to residence. The landlord, thus, cannot be forced to sue a defendant who is neither a necessary party nor is required by the court to enable it completely and effectually to adjudicate upon the issues.

(Para 8)

B.B.S. Sobti, Advocate *for the petitioner.*

Atul Goyal, Advocate *for the respondent No.1.*

RAJAN GUPTA, J.

(1) Peculiar facts giving rise to this case are that Sudeep Kaur and Charanjit Singh got married on 4.7.1984 according to Sikh rites. After marriage, they lived in the demised premises at Ludhiana. One son namely, Paramjit Singh and one daughter Manjot Kaur were born out of the wedlock. Entire family lived in the house owned by respondent No.1 Balwant Singh Chhabra. An eviction petition was preferred by the landlord against tenant Charanjit Singh (husband of petitioner). During the pendency of the petition, an application was moved by the petitioner for her impleadment as a respondent in the eviction petition. She raised the plea that she alongwith her two children was residing in the premises in question. She was also paying rent thereof. She had earlier sought an injunction to restrain her husband from evicting her from the demised premises. Pursuant thereto

an ad-interim injunction was granted by the civil court at Ludhiana. She pleaded that she was a necessary party to the suit. Either she be impleaded as a respondent in place of her husband Charanjit Singh or as additional respondent. Plea of petitioner was resisted by the landlord Balwant Singh Chhabra. He apprised the court that marriage between Charanjit Singh and Sudeep Kaur (petitioner) had been dissolved by way of a decree dated 3.2.2005. They being no longer husband and wife, she had no right to defend the eviction petition. Moreover, there was no privity of contract between landlord and wife of the tenant. According to him, instant application had only been moved to delay the eviction proceedings. The application moved by the petitioner was dismissed by the Rent Controller on 4.9.2010. Aggrieved, present petition was preferred before this court.

(2) Learned counsel for the petitioner has assailed the order contending that petitioner cannot be rendered homeless after having been divorced by her husband. Her rights remained alive by virtue of agreement between her and her husband. At the time of divorce by mutual consent, husband had agreed that he would provide shelter to her. He had, thus, parted with tenancy rights in her favour.

(3) Learned counsel appearing for respondent No. 1 landlord has vehemently opposed the plea. He submits that marriage between the parties having been dissolved by virtue of a decree, wife had no right to contest the eviction proceedings. Application for impleadment was moved by the petitioner merely to delay the proceedings. He has relied upon judgments reported as *B.P. Achala Anand* versus *S. Appi Reddy & anr. (1)*, and *Ruma Chakraborty* versus *Sudha Rani Banerjee & Anr. (2)*, in support of his contention.

(4) I have heard learned counsel for the parties and given careful thought to the facts of the case. The trial court has declined the plea of the petitioner, who is wife of original tenant, to be impleaded as a party. It has been vehemently contended that tenancy rights in favour of a divorced wife are not extinguished in the event of divorce by the husband, particularly when husband had promised to provide residence to the wife. Wife placed in such a situation would be equally entitled to defend the eviction proceedings

(1) 2005 (2) R.C.R. (Civil) 80

(2) 2005 (4) R.C.R. (Civil) 394

as tenancy is in favour of the whole family and not just the husband. I have considered rival contentions of the parties. In *B.P. Achala's case (supra)*, the apex court has drawn a distinction between rights of a deserted wife and one who has been lawfully divorced. It has held that a deserted wife in occupation of a tenanted premises could not be placed in a position worse than that of a sub tenant. She could not be deprived of roof of her head where the tenant had conveniently left her to face peril of eviction. The original tenant having lost interest in protecting his tenancy, the right would devolve on the deserted wife to protect the same. Thus, she would be necessary party to eviction proceedings. However, where marriage had come to an end by way of a decree of divorce, wife's case would stand on different footing. Her right of residence in the matrimonial home would depend on terms and conditions of the decree granting divorce. The apex court observed as follows:-

“34. So far as a deserted wife, whose status as wife has not come to an end by a decree of divorce or by decree for annulment of marriage, is concerned, we have made the position of law clear as above. However, the case of a divorced wife stands on a little different footing. Divorce is termination of matrimonial relationship and brings to an end the status of wife as such. Whether or not she has the right of residence in the matrimonial home, would depend on the terms and conditions in which the decree of divorce has been granted and provision for maintenance (including residence) has been made. In the event of the provision for residence of a divorced wife having been made by the husband in the matrimonial home situated in the tenanted premises, such divorced wife too would be entitled to defend, in the eviction proceedings, the tenancy rights and rights of occupation thereunder in the same manner in which the husband could have done and certainly not higher or larger than that. She would be liable to be evicted in the same manner in which her husband as tenant would have been liable to be evicted.

35. In the present case, it is admitted by the appellant that on 3.12.1998, that is, during the pendency of these proceedings and while the matter was pending in the High Court a decree for dissolution of marriage by divorce based on mutual consent has been passed.

The terms and conditions of such settlement have not been brought on record by the appellant which she ought to have done. It is not the case of Smt. Achala, the appellant that she is entitled to continue her residence in the tenanted premises by virtue of an obligation incurred by her husband to provide residence for her as a part of maintenance. She cannot, therefore, be allowed to prosecute the appeal and defend her right against the claim for eviction made by the landlord.”

(6) Subsequent to the judgment delivered in *B.P. Achala's case (supra)*, the apex court again dealt with the matter in another case i.e. *Ruma Chakraborty's case (supra)* emanating from similar circumstances. It was a divorced wife who sought impleadment to defend the eviction proceedings. The apex court held as follows:-

“20. The case on hand is a case of divorced wife. It is true that divorced wife is also a wife. We have already dealt with the case of the appellant and her right to contest or defend herself in the pending eviction proceedings. We have already held that she has no right to contest or defend herself nor a right to file and prosecute the eviction proceedings. There is no privity of contract between the appellant and the landlady. The tenancy is in favour of the appellant's husband. The Family Court has granted a decree for divorce on payment of certain sum by way of maintenance. As a matter of fact, the appellant's husband, the tenant is contesting the Rent Control proceedings and has filed a written statement denying the claim of the landlady. It was argued by Ms. Kamini Jaiswal on behalf of the appellant that the appellant was recognised by the landlady as a sub-tenant. In support of the said submission, she placed reliance on the letter written by the landlady to the appellant on 18.12.1989. This letter, in our opinion, will be of any aid or assistance to the appellant. It has been stated in that letter that the appellant has been paying the rent on behalf of one Duttas and occupying the said accommodation. The appellant was requested to get a confirmation in writing that he has no interest in the ground floor accommodation of the house in question and surrender the possession of the same to the landlady so that the

agreement could be entered into with the appellant on fresh terms if the appellant proposed to continue to stay there. The letter was concluded by saying that until these formalities are completed the occupation of the ground floor accommodation by the appellant is unauthorised and illegal.

21. We, therefore, cannot agree with the submission of learned counsel for the appellant that the landlady has so recognized the appellant as sub-tenant. In para 35 above, this Court deals with the case of a divorced wife. We have already extracted para 35.

22. For the foregoing discussion, we are of the opinion that the Court has no jurisdictional power to add a person as a party who is neither a necessary party nor a proper party. The appellant in the status of divorcee cannot claim interest in the suit premises either independently or through her erstwhile husband and as such she cannot be held to say that she is a party without whose presence the court cannot adjudicate and pass the decree. She is, therefore, not a necessary party. The appellant is also not a person whose presence is necessary to enable the Court effectually and completely to adjudicate all the questions involved with the suit."

(7) The court, thus, came to the conclusion that divorced wife was not a necessary party and had no right to defend the eviction proceedings. In the instant case, admittedly a petition under Section 13-B of the Hindu Marriage Act was instituted on 5.5.2004. As mandated by law, the case was taken up after a period of six months. On 3.2.2005, statements of both husband and wife (petitioner) were recorded and decree was passed on same day. The operative part of the judgment, which has been placed on record, reads thus:-

"3. Statements of the parties were recorded on 05.05.2004. The proceedings were adjourned for a period of more than six months to enable the parties to ponder over the matter.

4. The petitioners have appeared today. Their statements were recorded. They have not been able to reconcile. There is no scope for them to live together. The petitioners have settled all their disputes regarding dowry articles, istri dhan and past and future permanent

alimony. Now nothing is left due against each other. It has also been agreed between the petitioners that their son and daughter will remain with petitioner Sudip Kaur and petitioner Charanjit Singh will not claim their custody in future.

5. This petition is allowed. The marriage between the petitioners is henceforth declared dissolved by passing this decree under Section 13-B of the Hindu Marriage Act. Decree sheet be prepared."

(8) A perusal of the aforesaid decree shows that there is no settlement as regards residence to be provided to the petitioner. It merely states that both the parties have settled their dispute regarding dowry articles, *Istridhan*, permanent alimony and custody of children. There is no reference, whatsoever, to the right of residence in the demised premises or respondent No.2 having parted with tenancy rights. Even statements of both the parties recorded on 3.2.2005, which have been placed on record, have been perused. Same also refer only to permanent alimony, dowry articles, custody of children etc. There is no reference, whatsoever, to the demised premises. In such circumstances, I am of the considered view that ratio of judgments in *B.D. Achala's case (supra)* and *Ruma Chakraborty's case (supra)*, would be applicable. The petitioner having been divorced by way of decree dated 3.2.2005, matrimonial relationship between her and her husband stands terminated. Terms of decree do not show that any provision was to be made by the husband for residence of divorced wife. The tenancy subsisted between landlord and husband of the petitioner. Her marriage having been dissolved, she has lost the right to stay in the matrimonial home. As already observed, there is no mention in the decree of any right to residence. The landlord, thus, cannot be forced to sue a defendant who is neither a necessary party nor is required by the court to enable it completely and effectually to adjudicate upon the issues.

(9) This revision petition is, thus, without any merit and is hereby dismissed.