

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Civil Revision No.88 of 2021

Reserved on : 10.7.2025

Decided on: 22.9.2025

Prem Mohini Gupta

.....Petitioner

Versus

Sumitra (Deceased) through LRs

....Respondent

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting? Yes.

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

For the respondent : Ex-parte, vide order dated 12.3.2025.

Vivek Singh Thakur, Judge

This Revision Petition has been preferred by landlord (DH) against order dated 7.1.2021, passed by Rent Controller, Shimla, in Case No.8-11 of 2017, whereby objections, preferred by respondent (JD) on 26.4.2018, have been allowed, with finding that at the time of filing the Rent Petition, status of parties stood changed in view of Agreement to sell and, therefore, there were minimal chances of obtaining eviction order in favour of landlord, in case the fact of execution of Agreement to Sell by DH to sell the property to the tenant would have been disclosed at the time of filing the eviction petition.

...2...

2. Landlord (DH) had presented Rent Petition No.142/2 of 2015, titled **Prem Mohini Gupta v. Sumitra Devi**, on 5.8.2015, which was registered on 12.8.2015. The Rent Petition was filed on the ground of arrears of rent from 1.3.2001 till the date of filing the Rent Petition, which were not paid despite raising demand by the landlord.

3. Sumitra Devi was served for 11.1.2016, but she did not appear and contest the petition and, accordingly, she was proceeded ex-parte vide order dated 11.1.2016.

4. After hearing ex-parte arguments, the Rent Controller had held that landlord was entitled to recover amount to the tune of ₹4,35,860/- as arrears of rent @ ₹1650/- per month, plus statutory interest @ 9% per annum from 1.3.2001 to 14.3.2012, and amended interest @ 12% per annum with effect from 15.3.2012 till passing of eviction order, i.e. 1.10.2016. Sumitra Devi was directed to pay/deposit the aforesaid amount within 30 days w.e.f. 1.10.2016, i.e. the date of passing of order, failing which she would be liable to be evicted from the demised premises.

5. Admittedly, Sumitra Devi did not deposit the amount. Resultantly, Execution Petition No.15/10 of 2017 was filed by the landlord against Sumitra Devi. Sumitra Devi had expired on 4.7.2017. However, the Execution Petition was dismissed in default on 23.8.2018 as unsatisfied.

...3...

6. Thereafter, fresh Execution Petition No.41-10 of 2017, Prem Mohini Gupta v. Sumitra (Deceased) through Shyam Lal (son) was instituted. Shyam Lal contested the Execution Petition by filing Objection Petition No.8-11 of 2017 on 26.4.2018.

7. It was claimed on behalf of JD that parents of Shyam Lal were entitled to receive rent of the premises in question with effect from January 2003 and, therefore, order dated 1.10.2016, passed in Rent Petition, has no value and was not sustainable in the eyes of law and, thus, was not executable.

8. It is further stated in the Objection Petition that Execution Petition, otherwise also, was not sustainable for the reason that DH Prem Mohini Gupta had executed an Agreement to Sell on 21.1.2004 with JD Shyam Lal for sale of half of the Bakery Building from the ground floor to top floor (which included the premises in dispute also) and half of the Bakery Building in the ground floor, for a sum of ₹3,50,000/-, out of which the DH had received ₹70,000/- (₹50,000/- on 24.12.2002 and ₹20,000/- 21.1.2004) and the balance amount of ₹2,80,000/- was to be paid at the time of registration of sale deed. As JD Shyam Lal could not obtain permission from the Government to purchase the property, execution of the sale deed was extended from time to time.

...4...

9. It has been submitted that JD was already in occupation of top floor, i.e. 4 rooms, and became part owner of the property and, therefore, there was no question of his parents being tenants of 4 rooms in the top floor as alleged. It has also been canvassed on behalf of JD Shyam Lal that DH had concealed material facts from the Court, as neither mother of JD nor JD was tenant of DH on rent of ₹1650/- as alleged, nor the rent was allegedly due from 1.3.2001.

10. Further that DH, on 21.1.2004, had even authorized JD Shyam Lal to take possession of one room of Anand Sarup by breaking open the lock of the room. According to JD, DH had played a big fraud and cheated Sumitra Devi by filing Rent Petition on false grounds and, therefore, it has been contended that Execution Petition, filed on the basis of order obtained by misrepresentation and pleadings based on incorrect facts, is not at all maintainable.

11. A copy of Agreement to Sell dated 21.1.2004 has been placed on record. It depicts that time to make payment of balance amount and registration of Sale Deed was extended from 28.2.2004 to 30.6.2004 on 28.2.2004 and on 19.7.2004 it was extended from 30.6.2004 to 30.10.2004, and this extension was signed and attested by Shyam Lal and Prem Mohini Gupta.

...5...

12. Clauses 6 and 7 of Agreement to Sell, dated 21.1.2004, read as under:

“6. That the purchaser will handover the vacant and peaceful possession of the two rooms on the top floor which are at present in the possession of Smt. Sumitra Devi (mother of purchaser) and these two rooms are presently occupied by Sh. Asha Ram and Sh. Daulat Ram, on or before 29th February, 2004, because these two rooms are not the part and parcel of the property hereby being agreed to be sold.

7. That the earlier agreement dt. 24.12.2002 execute with Smt. Sumitra Devi and Sh. Asha Ram the mother and father of the present purchaser, regarding the sale of top floor of present bakery building, stands cancelled and it shall have no effect hereinafter and will be superseded by this agreement. No claim whatsoever shall be available on the basis of the agreement dt. 24.12.2002 to the either party.”

13. In aforesaid facts and circumstances, the Rent Controller has placed reliance on pronouncements of the Apex Court in *Devasahayam (D) by Lrs. Vs. P. Savithramma and Ors.*, (2005) 7 SCC 653 : 2005(2) RCR(Rent) 369(SC); and *Arjunlal Bhatt Mall Gothani and others, v. Girish Chandra Dutta and another*, (1973) 2 SCC 197 : 1973 RCR (Rent) 513 (SC).

14. Learned counsel for the DH has contended that the ratio of *Arjunlal Bhatt's* case was not applicable in present case, but present case is squarely covered by the judgment passed by a learned Single Judge of this High Court in case titled as *Gursaran v. Shakuntala*, reported in 1996(2) RCR 102 (HP). Following paragraphs have been referred by the learned counsel for the DH:

...6...

"24. In the case, under reference, as pointed out earlier, agreement to sell (Ex. RW-1/A) dated 25th February, 1980 nowhere specifically provided that the tenancy in favour of Gursaran had come to an end. The possession of House No. 114 of Sh. Gursaran was also not transferred in part performance of that agreement. Moreover, terms of agreement, as detailed above, nowhere could lead to the inference that tenancy in favour of Gursaran stood extinguished, but on the other hand the only inference in view of this term and previous litigation could be that tenancy was to continue and it could be terminated or eviction could be there in due course of law, especially when injunction suit was dismissed and the present landlords claim that they have become owners of the House No. 114 by way of sale, in their favour, was not disturbed at all.

25. It has also been contended that the Petitioner Gursaran took some repair of the house, which were done in part-performance of the agreement. This plea again is not available especially when the previous litigation as discussed above brought an end to such a plea.

26. So far as the grounds of eviction were concerned, both the forums below have rightly held that the landlords have established grounds for eviction through legal evidence. This Court has been taken through the entire evidence examined in this behalf. The inferences drawn by two forums do not require any interference. Otherwise also, learned counsel for the tenant has not assailed those grounds, by submitting any argument in that behalf, except that the rent due has been paid."

15. Order for eviction had been passed with respect to the premises in question, consisting of four big rooms on top floor of Bakery Building Dhalli, which also include kitchen and bathroom.

16. As evident from Clauses 6 and 7, reproduced supra, an Agreement to Sell, dated 24.12.2002, was executed with Sumitra Devi and Asha Ram, who were parents of present JD

...7...

Shyam Lal, regarding sale of top floor of Bakery Building, but the same was cancelled and superseded by Agreement to Sell dated 21.1.2004. Former Agreement to Sell (24.12.2002) was with respect to entire property of Bakery Building, whereas the latter Agreement to Sell (21.1.2004) is with respect to half of entire portion, from top to bottom, of Bakery Building, which includes only two rooms on top floor of Bakery Building and with respect to remaining two rooms it has been stated in this agreement that these were in possession of mother of JD Shyam Lal, who was original tenant, and two rooms were occupied by Asha Ram and Daulat Ram, who were to vacate the same on or before 29.2.2004. Therefore, Rent Controller has arrived at a wrong conclusion that entire premises in reference were subject matter of the Agreement to Sell.

17. Even otherwise, as provided in Section 54 of the Transfer of Property Act, 1882, Agreement to Sell does not create any title in favour of the purchaser as it is only an Agreement to Sell but not sale or transfer of property subject matter of the Agreement to Sell. Therefore, JD Shyam Lal, to acquire title on the subject matter of the Agreement to Sell had and has to ensure execution of the Sale Deed.

18. It is also apparent from the record that JD Shyam Lal could not obtain permission to purchase the property and, resultantly, Agreement to Sell was extended from time to time.

...8...

What happened to the said agreement or the application submitted by JD Shyam Lal seeking permission to purchase the property has not been placed on record. There is nothing on record that JD Shyam Lal or his successor-in-interest ever took any step, including filing a suit for specific performance, in furtherance to Agreement to Sell.

19. JD Shyam Lal had also expired during pendency of the Execution Petition and was substituted by his wife Kamlesh.

20. It has come on record that Kamlesh had instituted a Civil Suit, titled *Kamlesh v. Prem Mohii Gupta*, on 28.11.2018, which is pending in Court No.4, Shimla, wherein Kamlesh has sought declaration against eviction order, with consequential relief of permanent prohibitory injunction restraining the DH Prem Mohini Gupta (defendant in the Civil Suit) from evicting Kamlesh (plaintiff) pursuant to eviction order dated 1.10.2016.

21. It has been wrongly concluded by the Rent Controller that subject matter of Agreement to Sell dated 21.1.2004 is the same as that in the Rent Petition. Rent Petition has been filed for eviction from entire top floor of the Bakery Building, whereas Agreement to Sell refers only to two rooms thereof with a specific rider that physical possession of remaining two rooms shall be given to the landlord, which were in possession of Sumitra Devi, which indicates that the two rooms were in exclusive possession of Sumitra Devi, which were not part of

...9...

the Agreement to Sell with Shyam Lal and, therefore, it has not been proved that Agreement to Sell was pertaining to the entire premises in reference.

22. There is another aspect of the case. Agreement to Sell is alleged to have been executed on 21.1.2004. From pleadings, it also appears that some amount was also paid to the landlord, but for grant of permission by the Government, the sale deed could not be executed and balance amount of ₹2,80,000/- payable on the execution of the sale deed remained unpaid.

23. Rent Petition was preferred by the landlord in the year 2015. The JD did not contest the petition nor any Agreement to Sell dated 24.12.2002 has been proved on record, but execution thereof has been elucidated from the documents placed on record, including Agreement to Sell dated 21.1.2004. In absence of any material on record, it is not possible to adjudicate the claim on the basis of alleged agreement dated 24.12.2002.

24. Agreement dated 21.1.2004 is an Agreement to Sell/Lease. It is not an Agreement to Sell rather it has been categorically stated in it that the seller/executor was desirous of selling/leasing and the purchaser had agreed to purchase/take on lease hall of the Bakery Building.

25. It appears from aforesaid that the agreement was not exclusively an Agreement to Sell but it was having alternative

...10...

either to sell out or lease out the property. Therefore, it cannot be said that at the time of execution of Agreement dated 21.1.2004, relation between the landlord and tenant came to an end as the agreement, in alternative, was for lease also.

26. In view of above, by allowing the Objection Petition filed by Shyam Lal, Rent Controller has committed an error of fact as well in law.

27. In the agreement, referred supra, it is nowhere stated that tenancy had come to an end. Had it been an Agreement to Sell only, then there was possibility of drawing inference that tenancy came to an end at the time of execution of agreement. As the agreement was in alternative to sell or lease out, therefore, it has to be construed, in the given facts and circumstances of the present case, especially for the nature of the agreement, that on execution of the agreement to sell/ lease, the tenancy would not come to an end. As recorded supra, agreement does not include the entire tenanted premises and, therefore, also Rent Controller has committed a mistake by allowing the objections.

28. JD was duly served but she did not opt to contest the petition. It has come on record that she had filed a Civil Suit which was stated to be pending adjudication. Present status of the Civil Suit has not been disclosed.

...11...

29. There is nothing on record that Sumitra Devi or Shyam Lal for specific performance of the agreement have ever filed any suit or taken any other action. Rather on receiving notice in Rent Petition, Sumitra Devi did not contest the same. Thus, in these circumstances, it would be wrong to construe that, for execution of agreement, relationship of landlord and tenant had come to an end, instead Sumitra Devi did not dispute the same by choosing not to contest the Rent Petition. There is nothing on record to depict that even Shyam Lal or his wife Kamlesh have filed suit for specific performance.

30. In the aforesaid given facts and circumstances of the present case, judgment in *Arjunlal Bhatt's* case supra is not applicable.

31. With the aforesaid discussion, impugned Order dated 7.1.2021 is set aside and Objection Petition is directed to be restored to its original status with original number before the concerned Rent Controller Shimla.

32. DH is directed to ensure her presence before the Rent Controller on 13.10.2025 and shall take appropriate steps for service of Kamlesh in the Execution Petition. Needless to say, if any objection is taken by Kamlesh on the basis of Civil Suit preferred by her, then such objection shall be decided by the Executing Court in accordance with law. In case, Kamlesh does not opt to contest the Execution Petition or does not raise any

...12...

objection on the basis of Civil Suit stated to have been preferred by her, the Executing Court shall proceed further in accordance with law.

33. The Execution Petition shall be decided by the Executing Court as expeditiously as possible, preferably on or before 31.12.2025.

The Revision Petition stands allowed and disposed of. Pending application, any, also stands disposed of. A copy of this order be sent to the Rent Controller forthwith.

September 22, 2025_(sd)

(Vivek Singh Thakur)
Judge.