

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.2636 of 2004 (O&M)

Date of decision: 22.04.2015

Pritam Singh son of Shri Kartar Singh, resident of Malkana Patti,
Samana, District Patiala.

... Petitioner

versus

Balwant Singh (deceased,through his LRs) son of Waryam Singh,
resident of Malkana Patti, Samana, District Patiala.

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Gurcharan Singh Bains, Advocate,
 for Mr. Vijay Sharma, Advocate,
 for the petitioner.

Mr. Har Naresh Singh Gill, Advocate,
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. The landlord, who sought for ejectment for non-payment of rent, was resisted in his action by a plea that there was no jural relationship of the landlord and tenant. The landlord had to therefore establish the relationship and he relied on a photocopy of the rent deed alleged to have been executed by the respondent. The original was reported to have been produced before court on demand by the

respondent and taken back by the petitioner but lost through the course of the proceedings. A complaint with the police for loss was reported to have been made and the petitioner had attempted to therefore produce secondary evidence being the photocopy of the rent deed. The Rent Controller did not accept the secondary evidence since he was not even convinced that the original had been lost. He made observations of the fact that the landlord had not called any witness from the police about the alleged complaint and did not also accept that there was any lease in favour of the petitioner. This assumes significance in the context of the respondent pleading that he had put up a construction out of his own expenses and he had obtained electricity connection in his own name and his enjoyment was in his own right and he had never paid any rent to the petitioner. This decision of the Rent Controller was affirmed in appeal.

2. The counsel appearing on behalf of the landlord contends that if the original had been shown in court but it was not produced, the Rent Controller and the appellate court must have accepted the petitioner's version that it had been lost and a justifiable ground had been established under Section 65 of the Evidence Act for production of secondary evidence. There was also a marginal witness to the document who had given evidence about the fact of the preparation of the lease deed and the courts below were not

correct in discarding the evidence and holding that the landlord had not proved the tenancy.

3. It is admitted by the counsel that the lease deed was required to be written on stamp paper but the original was not so written. It was also unregistered, but the counsel says that the tenancy of the document was for month to month and did not require registration. There is a certain fundamental difficulty which is insurmountable for the landlord to scale. Section 35 of the Stamp Act bars production of any document in evidence if it is required to be stamped but not stamped. If the original is not stamped, a photocopy cannot be admitted as evidence of any transaction of lease even by invoking Section 65. A justification for production of secondary evidence for any of the grounds mentioned under Section 65 of the Evidence Act will still not exclude the bar which Section 35 of the Stamp Act imposes. The effect of the bar of Section 35 and the inadmissibility of reception of secondary evidence was considered by the Supreme Court in **Jupudi Kesava Rao Versus Pudavarthi Venkata Subbarao and others-AIR 1971 Supreme Court 1070** where the court held that in view of Sections 35 and 36 of the Stamp Act, secondary evidence by way of evidence or copy of document which was insufficiently stamped was not admissible in court. If the petitioner had any case to succeed, it would have been possible only if he was able to give evidence aliunde that such a

jural relationship of pendency existed. It could have been possible by any witness proving the payment of rent by the tenant to the landlord. In the absence of any document which is admissible the lease by implication could arise only on proving of payment of rent. If that proof was not available, I would find no reason to modify the decision of the court below that held that the tenancy was not established.

4. There is no scope for interference. The civil revision is dismissed, although on different grounds.

(K.KANNAN)
JUDGE

22.04.2015
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