

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

Regular Second Appeal 511 of 1995 (O&M)

Date of decision: 19.11.2015

Ashok Kumar

..Appellant

versus

Nand Lal and anothers

...Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Arun Jain, Senior Advocate with
Mr.Varun Parkash, Advocate for the appellant
Mr.M.L.Sarin, Senior Advocate with
Mrs.Ankita Sambyal Aggarwal and
Mr.Ritesh Aggarwal, Advocates for the respondents
Mr.Rajinder Goyal, Advocate for the applicant
In CM Nos.2754-C & 2755-C of 2011

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ? **Yes**
2. To be referred to the Reporters or not ? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

Kuldeep Singh, J.

Impugned in the present regular second appeal is the judgment and decree dated 13.12.1994, passed by the learned Additional District Judge, Hisar, affirming the judgment and decree dated 15.11.1991, passed by the learned Senior Sub Judge, Hisar, vide which, suit of the plaintiffs was decreed with costs for recovery of Rs.38,250/- with interest @ 12% per annum from the date of filing the suit till realization.

The summary of facts is that the plaintiffs claim that they

let out a shop to the defendant for Karyana business for the period 11.9.1980 to 10.12.1980 vide rent note dated 13.9.1980. The rate of rent was fixed at Rs.1000/- per month with 50% house tax to be charged by Municipal Committee. The defendant is now in arrears of rent from 11.2.1981 to 10.2.1984 @ Rs.1062.50, including house tax. It was further claimed by the plaintiffs that defendant became the defaulter and was in arrears of rent from 11.2.1981 to 10.2.1984. A rent application for ejectment was filed in which a rent of Rs.2400/- was tendered for the period from 1.10.1983 to 31.1.1984 @ Rs.600/- per month, which was accepted by the plaintiffs under protest. The said amount of Rs.2400/- has been adjusted for the period from 11.10.1980 to 10.2.1981. Now a sum of Rs.38250/- recoverable from the defendant.

In the written statement, the defendant admitted the tenancy. However, he denied the rate of rent of Rs.1000/- per month plus 50% house tax. It is stated that the shop was taken on rent by the defendant and Krishna Devi wife of Subhash Chand @ Rs.600/- per month, including house tax. The same rate of rent is entered in the accounts of the firm of the defendant. The execution of rent note was denied. It was stated that rent note is fabricated. It was further stated that Ashok Kumar and Krishna Devi are carrying out the Kiryana business in the name of Mittal Kiryana Shop till 25.2.1982. Thereafter, Vijay Kumar son of Babu Ram was taken as partner and the name of shop was changed to 'Vijay Kiryana Store', Hisar. They have been paying rent till 30.9.1983. The tendering of rent for the subsequent period i.e. from 1.10.1983 to 30.10.1984 was not denied.

From the pleadings, following issues were framed:-

- 1. To what amount the plaintiffs are entitled to recovery from the defendant on account of arrears of rent? OPP*
- 2. Whether the defendant is alone the tenant of the shop in dispute as alleged? OPP*
- 3. What is the rate of rent of the shop in dispute? OPParties.*
- 4. Whether this court has got no jurisdiction to try the suit? OPD*
- 5. Whether the suit is bad for non joinder of necessary parties, if so to what effect? OPD*
- 6. Relief.*

Lower Court held that defendant alone took the tenented premises on monthly rent @ Rs.1000 plus 50% house tax. It was further held that the rent was not paid. Accordingly, decree was passed which was upheld in appeal.

Regarding the rent note dated 13.9.1980, it was argued before the lower Court that it is lease deed and was compulsorily registerable. The contention of counsel for the defendant that it required compulsory registration was repelled.

Before the lower appellate Court, it was pleaded that the defendant was forced to sign blank papers. The contention that the rent note required compulsory registration was also repelled by the appellate Court.

I have heard learned counsel for the parties and have also carefully gone through the file.

It is to be further noticed here that Krishna Devi has filed

CM No.2755-C of 2011 for impleading her as party under Order 1 Rule 10 read with Order 22 Rule 10 read with Section 151 CPC. The same will also be discussed and decided along with the main appeal.

The dispute is regarding rate of rent. The tenancy is not denied. However, the claim of defendant is that he had taken the shop on rent along with Krishna Devi. The examination of original file shows that a writing was executed between the plaintiffs and Ashok Kumar defendant on 13.9.1980 (Ex.P1). The dispute is regarding the nature of this document which is mentioned as rent note. The lower appellate Court has taken the view that since the period of rent is from 11.9.1980 to 11.12.1980, i.e. three months, therefore, this rent note did not require registration apparently on the ground that it is memorandum containing terms and conditions agreed between the parties.

Learned counsel for the appellant has vehemently argued that rent note (Ex.P1) is in fact a lease deed and it required compulsory registration, therefore, it cannot be looked into by the Court to determine the rate of rent. It has been pointed out that the said rent note is signed by the defendant Ashok Kumar as well as plaintiffs. It is further stated that it being the lease deed, required compulsory registration as per Section 107 of Transfer of Property Act, 1882. For this purpose, reliance has been placed upon the authorities in M/s K.B. Saha & sons Pvt. Ltd. V. Development Consultant Ltd., 2009(1) LJR Supreme Court 427, Jai Ram Agrawal v. The 6th Additional District Judge, Allahabad and others, 1988(2) AIRCJ 45, Jagdish Parshad and another v. Madan Lal, HRR 1989 52,

Dhanti Devi v. Firm Goyal Iran Trading Co. & Others, HRR 1993 236, Budh Ram v. Rallia Ram, 1991(1) LJR 805, Choeth Ram v. Shri Deep Chand and another, 1977(1) RCR (Rent) 499, Surinder Kumar v. Rattan Lal, 2006(3) RCR (Civil) 291. It has been further argued that in Dhanti Devi's case (*supra*), the rent note was only for three months and it was held to be lease deed, therefore, it was held by this Court that it requires compulsory registration. Therefore, it cannot be taken into consideration by this Court to determine rate of rent.

First of all, it is required to be determined whether Ex.P1 is lease deed or a memorandum containing terms and conditions of the agreement. Both the Courts below have taken the view that it contains the terms and conditions of the tenancy and did not require compulsory registration. It was noticed that according rent note (Ex.P1), the tenancy started from 11.9.1980, whereas this document was executed on 13.9.1980. I have carefully examined the document (Ex.P1). The perusal of the document shows that the shop was given on rent for three months for the period from 11.9.1980 to 10.12.1980. The document (Ex.P1) was executed on 13.9.1980. It goes to show that tenancy had already started on 11.9.1980. However, this document was executed later on. Therefore, tenancy was not created by the document (Ex.P1) but was already existing prior to the execution of the document. Therefore, I concur with the findings of both the Courts below that Ex.P1 did not require compulsory registration. The document has been proved by examining scribe and witnesses. The minor discrepancies in the statements of the attesting witnesses and the scribe have been ignored by both the Courts below

and in the regular second appeal, this Court cannot interfere in the findings of facts recorded by both the Courts below. Therefore, for determining rate of rent, Ex.P1 was right taken into consideration.

Moreover, even if for argument sake it is held that Ex.P1 is lease deed for 3 months, it did not require registration. In Satish Kumar v. Zarif Ahmed and others, J.T. 1997(3) S.C. 457, where the tenancy is for 11 months or less, the matter was considered and determined by the Apex Court. In the said case, the agreement of lease was for 11 months. The Apex Court observed as under:-

7. *The question, therefore, that arises is : whether a lease of immoveable property from month to month or for 11 months is a compulsorily registerable document, through it was reduced to writing as an instrument defined under Section 2(14) of the Stamp Act? A conjoint reading of the first part of section 107 read with Section 17(1) (d) of the Registration Act, as extracted hereinbefore, does indicate that a lease of immoveable property from year to year, or for any term exceeding one year or reserving a yearly rent should be made only by a registered instrument and all other instruments, though reduced to writing and possession is delivered thereunder, are not compulsorily registerable instruments.*

8. *Section 49 of the Registration Act prohibits receiving in evidence certain types of documents. It reads as under :*

"No document required by Section 17 by any provision of

the Transfer of

Property Act, 1882 to be registered shall--

(a) affect any immovable property comprised therein, or

(c) be received as evidence of any transaction affecting such property or conferring such power;

unless it has been registered:"

9.The combined effect of all the provisions is that an unregistered lease deed executed from month to month, for a period not exceeding 11 months, though reduced to writing and possession is delivered thereunder to a tenant, is not a compulsorily registerable instrument and, therefore, the prohibition contained in Section 49 of the Registration Act is inapplicable. Therefore, the document is admissible in evidence to consider the effect of the immovable property contained therein or to receive as an evidence of any transaction vis-a-vis such property.

This authority has also been followed by this Court in the cases of Victor Industries and others v. Banarasi Lal, 2007(1) RCR (Rent) 62 and Udai Singh v. Dhara Singh, 2014(1) RCR (Rent) 452. Therefore, in view of the in Satish Kumar's case (supra), it has to be held that lease for month to month or for a period not exceeding 11 months, does not require compulsory registration. The other authority Ahmed Saheb (dead) by Lrs and others v. Sayed Ismail, (2012) 8 Supreme Court cases 516 is not relevant to determine the issue in the present case as it was held in the said authority that unregistered document can only be read for collateral purposes and cannot be

read to determine the terms of the agreement.

The learned counsel for the appellant has also produced authority of Hon'ble Supreme court in M/s K.B.Saha & sons Pvt. Ltd. V. M/s Development Consultant Ltd., 2008(1) RCR (Rent) 660. In the said authority, which is by the same strength of judgments as the authority in the case of Satish Kumar (supra), the judgment in the case of Satish Kumar (supra) was not considered or distinguished and it was held that unregistered document cannot be taken into consideration to determine the terms of the tenancy.

The learned counsel for the appellant has further relied upon another authority of this court in Amrit Sagar Kayshap v. Mohinder Singh, 2004(1) RCR (Rent) 477, where the lease deed for 11 months was held to be unregistered document and not relied upon. However, even in the said case authority of the Supreme Court in the case of Satish Kumar (supra) was not considered or brought to the notice of the Court.

Learned counsel for the appellant has further referred to the receipt Ex.DW6/1, issued by the plaintiffs whereby the rent of Rs.600/- was received for the month of September 1983. He has also relied upon the income tax return Ex.DW3/4, wherein for income tax return for the year ending 31.3.1984, submitted by the plaintiff on 28.6.1982 i.e. after the filing of the suit, the rate of rent was mentioned as Rs.600/- per month. He has also referred to his own statement of accounts wherein rate of rent is mentioned as Rs.600/- per month. I am of the view that before the Income Tax authorities, people do state incorrect facts. However, the entries in the accounts

books of the defendant appellant and the income tax return is only some of the facts which are to be taken into consideration to determine the rate of rent and same is the fate of receipt Ex.DW6/1. However, in the face of the document (Ex.P1), which bears the signatures of the defendant on all the three pages, the rate of rent was correctly determined by the two Courts below. It is to be noted that the stamp paper for Ex.P1 was purchased by the defendant and as per entry made on the back of the first page, the stamp paper was purchased on 11.9.1980 from the stamp vender for execution of rent deed @ Rs.1000/- per month. The stamp paper of denomination of Rs.45/- was purchased. The entry regarding purchase of stamp paper also bears the signature of the defendant. It also amounts to admission on the part of the defendant regarding rate of rent. The minor discrepancies in the statements of witnesses regarding place where the document (Ex.P1) was executed, are to be ignored. There are concurrent findings of the two Courts below. There is no perversity in the same.

In view of findings recorded by this Court, no substantial question of law arises in the present appeal. Therefore, the present appeal has to be dismissed.

Coming to the CM No.2755-C of 2011 filed by Krishna Devi, I am of the view that Krishna Devi has filed this application in this regular second appeal. The shop was given on rent to Vijay Kumar only and if he has included some partner later on, it will not bind the plaintiff. Krishna Devi is a near relative of the defendant and apparently, she has been introduced to defeat the case of the plaintiff.

The document (Ex.P1) does not bear the signatures of the applicant to show that shop was jointly given on rent to her. The shop was given on rent only to Ashok Kumar and Karishna Devi has nothing to do with it. Moreover, in regular second appeal, no such application under Order 1 Rule 10 CPC is to be allowed so as to re-open the case. Therefore, application of Krishna Devi is nothing but an attempt made on behalf of the defendant to reopen the case and start de-novo trial and defeat the claim of the plaintiffs. The application is found to be frivolous and is dismissed.

In view of the foregoing discussion, the present appeal stands dismissed.

19.11.2015*gk***(Kuldip Singh)
Judge**