

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

Regular Second Appeal No.854 of 2004 (O&M)

Date of decision: 30.9.2015

Naib Singh

... Appellant

Versus

Satya Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Amit Jain, Advocate,
for the appellant.

Mr.Sanjeev Gupta, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This appeal arises out of a suit for possession of the disputed shop and for recovery of mesne profits. The suit was dismissed by the learned Additional Civil Judge [Senior Division], Kurukshetra on 27th September, 2001. The construction was held to be more than 10 years old and therefore the civil court had no jurisdiction to evict the defendant which power lay in the Rent Controller under The Haryana Urban (Control of Rent and Eviction) Act, 1973 (Act 11 of 1973) which does not protect buildings less than 10 years old.

2. In appeal under Section 96 CPC, the learned Additional District Judge, Kurukshetra, did not agree with the trial court and decreed the suit thereby the judgment and decree of the learned trial Court was set aside and the findings on issues No.1 and 2 have been reversed. The dispute could not go to the Rent Controller as the jurisdiction was vested in the civil court for regaining possession of property, the building being less than 10 years of age and therefore immune from the rent restrictions.

3. The case set up by the plaintiffs was that they purchased the property vide sale deed dated 1st August, 1986 when the plot was vacant. Plaintiff No.2 rented out the premises to the defendant through registered rent note @ ₹ 700/- per month on 7th December, 1992. The defendant refused to make the payment of outstanding rent and the arrears accrued to the tune of ₹ 14,000/- as on 1st January, 1994. The plaintiffs issued a legal notice on 19th July, 1995 to the defendant to quit and asking for vacation of the premises and to recover possession by evicting the defendant from the premises vide letter Ex.PC in accordance with law. The defendant replied on 25th July, 1995 vide mark 'D'.

4. The crucial issue in the present case which arises for determination is whether the civil court had jurisdiction or not to adjudicate the matter and to decree the suit for possession in the face of the defendant raising the issue that the construction was more than 10 years old and his ejection could only be sought under the Rent Act. The claim of the defendant was that the shop was constructed in February, 1985. The suit was filed on 5th September, 1995 and ten years had yet to arrive. The plaintiffs had purchased the property on which the shop is built on 1st

August, 1986. The defendant meant that the building stood constructed before the purchase of land.

5. The plaintiffs to prove their case examined PW1 Subhash Chander, Recor Keeper, PW2 Gurdial Singh, Upper Division Clerk, office of SDO [Operation] and PW3 Manohar Lal who was one of the plaintiffs, PW4 Satya Devi and PW5 Harbans Lal and Subhash Chand.

6. The dispute centered on the date of construction and whether it was less than 10 years on the date of filing of the suit when eviction could be sought by filing a suit in the civil court with or without notice under Section 106 of the Transfer of Property Act, 1882.

7. The vital document was the sale deed in favour of the plaintiffs dated 26th June, 1986 in which the plot had been shown as vacant. The plot was purchased by the plaintiffs from Harbans Singh who appeared in the trial as a witness for the plaintiffs. The recitals in the sale deed were conclusive that there was no built up property on the vacant plot.

8. A few dates with respect to the suit property are necessary to notice in order to determine the question as to how old the disputed shop was.

9. Ex.P1 was a receipt dated 7th June, 1986 whereby the security was deposited by plaintiffs for water connection for raising construction. It may always be remembered during the course of discussion on each of the documents and the evidence on record and referred to that the suit was filed in 1995. The water connection was sanctioned by the SDO, Public Health vide Ex.P2 dated 22th September, 1986. Ex.P6/C is an application submitted to the Deputy Commissioner, Kurukshetra complaining of unreasonable delay in sanctioning of the site plan. Ex.P6/C is dated 26th June, 1987. The

application was marked to the Administrator, Municipal Committee, Thanesar for sanction of site plan. Accordingly, vide Ex.P6/D, the sanction was granted to raise construction according to approved plans. The date of sanction of the site plan by the Municipal Committee, Thanesar is apparent from Ex.P5, the certificate No.78 issued on 1st July, 1997 which bears the date of sanction as 27th May, 1989. Thus, the site plan was submitted in 1986 when the approval was not granted to carry out the construction over the vacant plot. It was only on an application that the Deputy Commissioner accorded sanction.

10. The next material date to determine the age of the commercial building/shop on the vacant plot is 11th April, 1991 when the electricity connection was granted by the power supplier and A/c No.AK25/342 was allotted vide Ex.P6 to the plaintiffs which brought light to the disputed shop.

11. In view of these facts, Mr.Sanjiv Gupta learned counsel appearing for the successful respondent argues that the plot most definitely was purchased in 1986 and equally definitely the sanction to construct a building was granted on 27th May, 1985. The electricity connection was released on 11th April, 1991 and thereafter the premises were constructed and given out on rent to the defendant and the present suit was filed on 5th September, 1995 within 10 years and therefore the suit was maintainable and not hit by the rent law restrictions.

12. Mr.Gupta builds a parallel argument and contends that even if the date is taken from the purchase or from the date of raising construction, the date of sanction of the site plan remains 1st August, 1989 or from the date when the electricity connection was granted on 12th June, 1991. He

submits that all these facts and coordinates were corroborated by the evidence on record. He submits that Mr.Amit Jain appearing for the plaintiffs-landlords has tried to build a new case in defending by denying the title of the landlord on the ground that the property is a separate property and the boundaries are not co-related and therefore the shop rented out is not the same as in the suit

13. Mr.Gupta submits that the defendant was trying to build a new case while at the same time denying title and towards this end he points out that no such issue was ever claimed as is sought to be argued in the second appeal which argument should not be entertained. He points out to the issues framed in the suit which read as : -

1. Whether plaintiff is entitled to a decree for possession against the defendant of the shop in question on the grounds mentioned in the plaint? OPP
2. Whether the plaintiff is entitled to a decree for recovery of Rs.14,000/- on the grounds mentioned in the plaint? OPP
3. Whether the shop in question was rented out to the defendant by plaintiff no.2 Manohar Lal as its absolute owner and a sum of Rs.10,000/- as Pagri has been received by him from the answering defendant? OPD
4. Relief.

14. However, no pleadings exist to support any of the four issues. Mr.Gupta urges that the defendant failed to establish that the plaintiffs are occupying any other premises. The burden to prove that there is another shop/construction was upon to the defendant to establish by evidence but

that burden could not be discharged. He submits that the error committed by the learned trial Court has been corrected in the first appeal and the facts and the evidence have been minutely discussed by the learned Additional District Judge, Kurukshetra and as such the present appeal has no substance and the same is liable to be dismissed.

15. Having heard the respective counsel at length I am not inclined to concede to the argument of Mr.Amit Jain appearing for the appellant that the documentary evidence on file was unreliable as in the plaint and the rent note no municipal or khasra number was mentioned and the house tax record could not be assumed of the suit property. His submission that even the municipal record was doubtful as the official witness has categorically deposed that the file was not traceable is of no moment. The age of the building has to be determined on the evidence taken together from all relevant points of view and by a comprehensive reading of the materials on record which when read indicate in all their probabilities that the shop in dispute had not come of age to be amenable to rent laws and eviction by the Rent Controller alone to the exclusion of the civil court jurisdiction.

16. I would also not accept the technical argument that the appellate court erred in law in relying upon the sale deed dated 1st August, 1986 in respect of the plot despite the fact that the boundaries given in the sale deed did not tally with the boundaries given in the plaint or the rent note and therefore the sale deed could not be considered for determining the age of the suit property until it could be established to be of the suit property. Mr. Jain relies on the settled proposition of law that onus to establish the date of construction is on the landlord and not on the tenant in

which position the unsuccessful appellant is.

17. What the appellant in fact seeks to do is to deny the status of the property as the one rented out and this limb of the argument is successfully met by Mr.Gupta when he submits that there are no pleadings to this effect in the suit to establish that the property was a separate property and the boundaries are not co-related as this issue was not put to trial by the appellant and the plea cannot be entertained for the first time in second appeal against an appellate decree. This argument, if permitted, would amount to tenant denying the title of the landlord on such a specious plea which is not permissible. The crucial question raised by Mr.Gupta is that not only there are no pleadings but no issue was claimed by the opposite party when it could have been at the appropriate stage and it is, therefore, no longer a triable issue as it is not founded in pleadings.

18. Therefore, in the totality of documentary evidence and oral evidence on record, a clear picture emerges in favour of Mr.Gupta's clients that the property was less than 10 years old and therefore the suit was competent.

19. In view of the settled position in law as arising from the facts established on record, no substantial questions of law arise in this appeal to be considered only after admission of the matter at a regular hearing when the hearing afforded by this court in motion is of the same quality and duration and that too twice over in re-hearing. The order in appeal suffers from no illegal infirmity or misreading of evidence and therefore no ground is made out to interfere in the second appeal side of this Court, for which reasons as are recorded above the appeal is found without any substance and

RSA No.854 of 2004 (O&M)

: 8 :

is accordingly dismissed without costs.

(RAJIV NARAIN RAINA)
JUDGE

September 30, 2015
Paritosh Kumar