

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No.2115 of 2008 (O&M)

Date of decision: 09.10.2015

Smt.Parveen Handa

..... Appellant

versus

Dr.Sarav Mohan Tandon

.....Respondent

RSA No.3857 of 2008 (O&M)

Smt.Parveen Handa

..... Appellant

versus

Dr.Sarav Mohan Tandon

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Vivek Khatri, Advocate for the appellant
Mr.Saurav Verma, Advocate for respondent

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

Kuldip Singh, J.

By this common order, I shall dispose of two regular second appeals bearing RSA Nos.2115 of 2008 and 3857 of 2008. For facility of reference, facts are being mentioned from RSA No.2115 of 2008.

Impugned in the present regular second appeal is the judgment dated 15.10.2007, passed by the learned Additional District Judge, Jalandhar, reversing the judgment and decree for possession and damages passed by the the learned Civil Judge, Junior Division,

Jalandhar dated 19.7.2006 and thereby dismissing the suits of the plaintiff with costs throughout.

Brief facts of the case are that the plaintiff filed a suit for possession of portion of property bearing No.836 in Ward No.5 Adampur, Tehsil and District Jalandhar consisting of two rooms as shown in red colour in the site plan and entire house No.836, Ward No.5, Adampur, boundaries of which are detailed in the head note of the plaint. Plaintiff has also sought the recovery of Rs.36000/- as damages for use and occupation of portion of the property, in dispute, consisting of two rooms. The plaintiff claims that she purchased the disputed property vide sale deed dated 1.8.1991 from Smt.Swaran Kaur wife of Gurbachan Singh, resident of Adampur, Tehsil and District Jalandhar. It is stated that on the intervening night of 10/11.8.1991, defendant tress-passed into the two rooms and forcibly took possession of the said two rooms of House No.836, Ward No.5, Adampur. Defendant further filed a suit for permanent injunction on 17.8.1991 in Civil Court at Jalandhar titled as Dr.Sarv Mohan Tandon versus Surinder Kumar Arora and others. The suit was dismissed on 31.10.1998 by the learned Civil Judge, Junior Division, Jalandhar. However, in appeal, the judgment was reversed by learned Additional District Judge, Jalandhar on 12.5.2001 and suit was decreed for permanent injunction against forcible dispossession. In the further appeal filed before the High Court, the High Court on 30.9.2002 modified the judgment and decree to the effect that the defendant shall be entitled to evict the plaintiff in accordance with law. The said judgment operates as resjudicata between the parties.

Defendant is in unlawful possession of the two rooms for which plaintiff claims compensation @ Rs.1000/- per month from August 1991 till 31.11.1998 with right to recover further damages till delivery of possession.

In the consolidation suit No.183 of 2004 plaintiff claimed damages @ Rs.1000/- per month for the period from October 1999 to September 2000 amounting to Rs.36,000/-.

In the written statement, the defendant pleaded that the defendant is a tenant at monthly rent of Rs.140/- under the original owner Swaran Kaur, who was residing in England. Since Swaran Kaur was residing in England, therefore, her daughter Harjinder Kaur used to collect the rent after executing the rent receipts. The rent receipts dated 6.10.1990 and 24.7.1991 are attached with the written statement. It is stated that the premises were taken on rent in October 1987 from Swaran Kaur. It is further claimed that at the time of execution of sale deed dated 11.8.1991 in favour of the plaintiff another tenant Rajinder Sehgal was also living in the said house. But the plaintiff took forcible possession from said Rajinder Sehgal. The previous judgment and decree were not denied. The liability to pay the damages were also denied. It was further stated that on 10.8.1991, at about 8.00 p.m., Surinder Kumar Handa, husband of the plaintiff along with Jagir Singh and other persons broke open the locks of other tenant Rajinder Sehgal and threw away his articles and also made attempts to throw away the articles of the defendant. Defendant reported the matter to the police and compromise was effected between the parties, which was signed by the husband of

the plaintiff, defendant and others. Another attempt was made on 15.8.1991 at about 8.00 or 8.30 pm, which compelled the present defendant to file a suit for permanent injunction on 16.8.1991. Defendant further claims that he was regularly paying the electricity bills since inception of tenancy i.e. October 1987 and was also entered as tenant in the municipal record. It was further stated that on 30.6.1994, Surinder Kumar Handa, husband of the plaintiff made a report to the police, wherein tenancy was admitted.

From the pleadings following issues and additional issues were framed:-

1. Whether plaintiff is entitled to possession & recovery prayed for? OPP

1A. Whether the judgment and decree sheets dated 12.5.04 and 30.9.02 operate as resjudicata between the parties? OPD

1B. Whether the defendant is tenant of plaintiff? OPD

2. Whether plaintiff has no locus standi? OPD

3. Whether this court has no jurisdiction? OPD

4. Whether suit is under value? OPD

5. Whether this suit is not properly verified? OPD

6. Relief.

Lower Court took up the issue No.1, 1A and 1B together and decided the same in favour of the plaintiff. Remaining issues were also decided in favour of the plaintiff and consequently, it was held that the plaintiff is entitled to possession of the suit property with damages @ Rs.500/- per month. But the judgment was reversed in

appeal, as stated above.

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

First and foremost question arising for consideration is as to whether the defendant (respondent herein), is a tenant in the disputed property or is a tress-passer? According to the plaintiff they purchased the disputed property from the original owner on 1.8.1991. According to the plaintiff, defendant, who happens to be a doctor, forcibly occupied two rooms in the said house on the night intervening 10/11.8.1991. On the other hand, the defendant claims that there were two tenants in the said house at the time of sale of house to the plaintiff. On 10.8.1991, plaintiff successfully threw away the articles of other tenant Rajinder Sehgal, whereas such an attempt on the defendant failed. Another similar attempt made on 15.8.1991 was also failed. Consequently, the civil suit for injunction was filed which was decided in favour of plaintiff as discussed above.

There is overwhelming evidence on file to show that the defendant was in possession of the disputed property before its purchase by the plaintiff. Appellate Court has dealt with the controversy in detail. It is to be noted that in the previous judgment between the parties, while the learned Additional District Judge reversed the findings of the learned Civil Judge, Junior Division. Vide judgment dated 12.5.2001 Ex.D16, the learned Additional District Judge observed that he do not want to make any comment whether the plaintiff is to be treated as tenant or not? It was observed that the said controversy is pending for adjudication. Therefore, it was

held that since the plaintiff (defendant herein) is in established lawful and legal possession of the demised premises, therefore, he is not a tress-passer. Accordingly, the question whether the present defendant is a tenant or not was left open in the previous litigation. If a reference is made to the statements made in the previous litigation, it comes out that Surinder Kumar Handa, husband of the present plaintiff, who was practically pursuing the case, had appeared as witness in the previous suit for injunction. Copies of his statements are Ex.DW15/1 to Ex.DW15/4. Though in the examination-in-chief, he has stated that they were delivered the possession of the vacant house at the time of sale but he had admitted that on 30.9.1991 a dispute had taken place between the parties and a compromise was also effected between the parties. He further claims that he had filed a complaint dated 30.6.1994 to the police. In cross-examination he had also admitted the rent receipts Ex.P27 and Ex.P28, issued by Harjinder Kaur daughter of the original owner. A copy of the compromise Ex.D1 shows that husband of the plaintiff, Surinder Kumar Handa had admitted that he will not tamper with the articles of Dr.Sarv Mohan Tandon lying in his house. Surinder Kumar Handa being the husband of the plaintiff had the implied authority to act on her behalf. Even in the present case, he has appeared as attorney of his wife, showing that he had been dealing with the matter on behalf of his wife. Compromise is signed by the several persons. Further a copy of the DDR dated 30.6.1994/1.7.1994 Ex.D2 shows that Surinder Kumar Handa had lodged a DDR No.22, wherein he had stated that before purchase of the house from Swaran Kaur, he had

inquired from Dr.Sarv Mohan Tandon, who was tenant in the room adjoining the street and that Dr.Sarv Mohan Tandon had promised to vacate the property but later on he changed his mind and later on filed a suit before the Civil Court. This admission of the husband of the plaintiff, while exercising the implied authority on behalf of the plaintiff is binding on her. Further, the defendant had produced several receipts of the payment of electricity bills, which pertain to the year 1987 to 1991 Ex.D4/1 to Ex.DW4/23, which show that defendant had been paying the electricity bills regarding the said electric meter installed in the disputed property. The fact that these receipts are in possession of the defendant goes to show that he had been paying the electricity bills of the electric meter installed in the said house. As discussed above, some rent receipts issued by the daughter of the original owner had been admitted by the husband of the plaintiff in the previous suit. Since the original owner Swaran Kaur was living in England, therefore, probably, her daughter was collecting rent and issuing the receipts. Since the receipts are admitted documents, therefore, even if it is proved by the defendant by producing the same, the same are taken to be proved even without examining the executant. In addition to this, the lower appellate Court has relied upon the statement of Pran Nath Sharma, Municipal Councilor, DW2, who is witness of the compromise Ex.D1, wherein husband of the plaintiff admitted the defendant to be tenant in the disputed property. Therefore, even if the evidence of the case is examined on merits, I am of the view that the lower appellate Court arrived at a correct conclusion in holding that defendant in this case is a tenant, in

established possession of the two rooms of the disputed property and therefore, he cannot be evicted except in due course of law. Filing of the suit for possession before the Civil Court is not the proper remedy. The proper remedy is to approach the Rent Controller and seek eviction under the East Punjab Urban Rent Restriction Act, 1949.

It being so, there is no illegality or infirmity in the findings of facts recorded by the first appellate Court. No substantial question of law arises in the present appeals. It being so, the present appeals are dismissed.

09.10.2015*gk***(Kuldip Singh)
Judge**