

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.551 of 2008

Date of Decision: 05.02.2015

Tanna Ji

..... APPELLANT

VERSUS

Mohan Lal

..... RESPONDENT

PRESENT: - Mr. S.M. Sharma, Advocate
for the appellant.

Mr. C.B. Goel, Advocate and
Mr. Sanjiv Gupta, Advocate
for the respondent.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

- 1) Whether Reporters of the local papers 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?

SHEKHER DHAWAN, J.

This Regular Second Appeal is directed against judgment and decree dated 02.01.2008 passed by the Court of learned Additional District Judge (Fast Track Court), Ambala whereby appeal filed by appellant Tanna Ji against the judgment and decree dated 11.02.2005 passed by the learned Civil Judge, Junior Division, Ambala was dismissed and the appellant was

directed to hand over the possession of the shop in question to the plaintiff-respondent within three months.

For convenience sake, hereinafter, reference to the parties is being made as per their status in the Civil Suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that plaintiff-respondent Mohan Lal in his capacity as landlord/owner had filed suit for possession of shop No.1 forming part of property bearing AMC No.1209/3 (Old No.5096/3) Jain Mandir Wali Gali, Ambala City and for recovery of the rent and mesne profits for illegal use and occupation of the property amounting to ₹8,000/-.

The case of the plaintiff is that he had purchased the suit property in the shape of *Khola* vide registered sale deed. Thereafter, he raised construction thereon in the year 1999 after getting the site plan sanctioned from Municipal Council, Ambala City on 25.01.1999. One room on the ground floor of the property was converted into the shop and the defendant took the said shop bearing No.1 on rent. The said shop is newly constructed building and, as such, the provisions of Haryana Urban (Control & Eviction) Act,

1973 (hereinafter referred to as 'the Act') were not applicable. The landlord issued notice under Section 106 of the Transfer of Property Act thereby terminating his tenancy from the shop in question.

The defendant took the preliminary objections raised that the Civil Court has no jurisdiction to entertain and try this suit as the building in question is an old building, construction of which was completed more than 10 years back. The defendant is an old tenant and, as such, the Rent Controller has no jurisdiction.

On merits, the defendant took the plea that the plaintiff had not purchased a '*Khola*' rather the defendant was tenant in the property in question for the last more than 12 years. The plaintiff might have raised construction after the site plan having been sanctioned from the Municipal Council but the same was not constructed in the year 1999 as alleged rather the same is an old building and he was continuously in possession as tenant from the last 12 years. He used to pay rent @ ₹600/- per month and later on the same was enhanced to ₹700/- per month and then enhanced to ₹1000/- per month. Hence the suit is not maintainable and same be dismissed.

Learned trial Court settled the following issues and the parties were put to trial:

1. Whether the plaintiff is entitled to recover the possession of the shop in dispute by way of ejectment of the defendant? OPP
2. Whether this Court has no jurisdiction to try and entertain the present suit? OPD
3. Relief.

The learned Court of First Instance after considering the material and evidence available on file decided Issues No.1 and 2 in favour of the plaintiff and suit of the plaintiff was decreed. Defendant was directed to hand over the vacant possession of the suit property within four months. The plaintiff was also held to be entitled to recover a sum of ₹8,000/- on account of mesne profits for illegal use and occupation of the premises in dispute.

Being aggrieved of passing of said judgment and decree dated 11.02.2005 and the findings having been returned by the learned Court of First Instance on various issues, the defendant-appellant preferred an appeal before the learned Additional District Judge (Fast Track Court), Ambala but remained un-successful. Hence, the present Regular Second Appeal before this Court.

When the present Regular Second Appeal was admitted, no substantial questions of law were framed. However, substantial questions of law have been placed on record by the appellant on 18.05.2009 during the pendency

of appeal for consideration by this Court, which are as under:

“1. Whether in the facts and circumstances of the case, construction of part of property for renovation can be termed as new construction for the purposes of invoking the provisions of the Transfer of Property Act for getting the land vacated?

ii) Whether in the facts and circumstances of the case, the findings of the courts below are based on misreading and misappreciation of evidence and, thus, legally unsustainable?”

At the time of arguments, Mr. S.M. Sharma, learned counsel for the appellant took the plea that the property was purchased in the shape of a '*Khola*' and the same was re-constructed in its entirety after getting the site plan sanctioned from the Municipal Council, Ambala City on 25.01.1999. This fact has been stated by PW-1 Ashok Sharma, Building Clerk from Municipal Council, Ambala City, who deposed before the Courts below that Mohan Lal had purchased the shop and renovated the same and fixed a shutter in place of wooden door. The construction of two shops was raised by the plaintiff after getting the site plan sanctioned from the Municipal Council. Tanna Ji appeared as DW-1 and deposed that this property was 80/100 years old

when the same was purchased by the plaintiff. The shops of all other tenants were newly constructed except his shop. Mohan Lal had raised the construction over the entire building except his shop after seeking permission from the Municipal Council.

Learned counsel for the appellant also referred to compromise Ex.P-3 which established that the shop cannot be considered to be newly constructed shop rather the same was renovated only.

Learned counsel for the appellant also took the plea that the premises is to be seen as a unit and the entire unit is to be as a whole and in this case unit was in existence. Mohan Lal plaintiff-respondent had himself admitted that the building was in existence earlier.

Learned counsel for the appellant placed reliance upon judgment of this Court in case of **Girdari Lal etc. Vs. Bhag Singh and another**, 1984(2) RCR(Rent) 587 wherein this Court had expressed the view that if a part of the premises was constructed during the period of exemption under the Notification issued under Section 3 of the Act and the rest already existed and the whole is let out to a tenant, the building will not be protected by the Notification. The definition of "building" in Section 2(a) of the Act includes a part of the building let out to a tenant. Unit is the building in

possession of the tenant though it may be only a part of the entire building.

While arguing this point Mr. Sanjiv Gupta, learned counsel for the respondent took the plea that the plaintiff-respondent has been able to establish before both the Courts below that the building in question was constructed on 25.01.1999 and the same was a new building. This concurrent finding on the said issue recorded on the basis of facts and evidence available on file by both the Courts below are not required to be interfered.

This Court has considered the rival contentions having been raised by the learned counsel for the parties and also gone through the compromise Ex.P-3.

As per compromise Ex.P-3, appellant Tanna Ji was to occupy another shop of Mohan Lal and possession of newly constructed shop was to be handed over within a period of four months. This was decided in judicial proceedings pending and having been decided in case of **Tanna Ji Vs. Mohan Lal.**

Learned Courts below have rightly placed reliance upon testimony of appellant-defendant Tanna Ji when he admitted in his cross-examination that shops of all other tenants were newly constructed except the shop of the appellant.

Learned Courts below also returned the findings in favour of the respondent on the ground that if the defendant was already in occupation of whole shop where was the necessity of execution of another rent note dated 01.09.2000. It sounds to the reasoning that in fact new construction was raised by the plaintiff and in view of agreement between the parties, fresh rent note was duly executed. That fact establish that construction of the shop was raised by the plaintiff in the year 1999 itself and the same was done after getting site plan sanctioned from the Municipal Council, Ambala. The said findings of the fact of both the Courts below are not required to be interfered in the present Regular Second Appeal.

Learned Court of First Appeal has rightly placed reliance upon judgments of this Court in cases of **Kartar Chand Vs. Shanti Devi**, 2000(1) RCR 388, **Sardar Singh Vs. Champa**, 1998(1) RCR 205 and **Ram Sarup Vs. Din Dayal**, 1996 HRR 314.

In view of the above, the construction of part of property for renovation cannot be termed as new construction and the Courts below have not misread or misappreciated the evidence available on file. Both the substantial questions of law settled by this Court on 18.05.2009 are decided against the appellant.

Resultantly, the present Regular Second Appeal is without any merit and the same stands dismissed.

**(SHEKHER DHAWAN)
JUDGE**

**February 05, 2015
jt**