

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1290 of 2011(O&M)
Date of decision : December 8, 2015

Nabha Gaushala Committee (Regd.) Nabha

..... Appellant

Versus

Raghubir Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Adarsh Jain, Advocate
for the appellant.

None for the respondents.

1. Whether reporters of 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?

Amit Rawal, J (oral).

The appellant-defendant is in Regular Second Appeal against the concurrent finding of fact whereby the suit filed by the respondent-plaintiff for mandatory injunction claiming the tenancy in his favour w.e.f. 1.4.1987 to 28.2.1988 @ ₹234/- per month inspite of advance rent of ₹2880/- the possession was not delivered, there being breach of obligation, has been decreed.

Mr. Adarsh Jain, learned counsel appearing on behalf of the appellant submits that the said suit was not

maintainable. Even the tenancy period, of eleven months had expired long time back, whereas the suit was decreed on 1.3.1989. The rent note was un-registered and therefore the respondents-plaintiffs cannot even take the plea of tenancy as per Section 116 of the Transfer of Property Act, 1882. Thus, prays that following substantial questions of law arise for determination by this court:-

“Whether in pursuance of an unregistered rent deed executed for a period of 11 months from 1.4.1987 to 28.2.1988, a suit for mandatory injunction for possession could be decreed after the period of 11 months had already expired.

Whether a proposed tenant under an unregistered rent deed is entitled to seek possession in a suit for mandatory injunction or the same is not maintainable and only a suit for specific performance or for recovery of damages or for possession was maintainable?

The respondents had put in appearance through Mr. H. S. Dhillon, Advocate but thereafter on many occasions, none has put in appearance on behalf of the respondents. Therefore, I proceed to decide the appeal in their absence.

I am in agreement with the contention of learned counsel for the appellant that the suit of such nature was not maintainable as period of tenancy had expired therefore, there cannot be a breach of obligation because on receipt of rent, the possession is deemed impliedly handed over. Thus, in essence, it is

proved that there was no tenancy and therefore the respondents-plaintiffs could not have asked for relief of mandatory injunction. The trial court did not notice the aforementioned fact and law that on the date of decision of the suit i.e.1.3.1989 the relief sought had become infructuous/extinct, for the reason that tenancy, as noticed above was for a period of eleven months.

It is a matter of record that in execution respondents-plaintiffs have been put into possession.

Since, in my view, the judgments and decrees of both the courts below suffer from illegality and perversity. The appellant-defendant would be liable to seek the restitution of the property in accordance with law.

In view of what has been observed above, the substantial questions of law noticed above is answered in favour of the appellant-defendant and against the respondents-plaintiffs.

Accordingly the judgments and decrees of both the courts below are set aside.

The appeal is allowed.

CM No.3588-C of 2011

In pursuance to the notice of motion order dated 1.3.2011 passed in RSA No.1028 of 2011, the application for additional evidence stands dismissed.

**(AMIT RAWAL)
JUDGE**

**December 8, 2015
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