

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.2352 of 2012

Date of Decision: 05.02.2015

Sanjeev Kumar

..... 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 16.04.2012 passed by the Court of learned Additional District Judge, Ambala whereby appeal filed by appellant Sanjeev Kumar against the judgment and decree dated 20.03.2010 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 two 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.3 (i.e. Shop in dispute) part of AMC property No.1209/3 (Old No.5096/3) Jain Mandir Wali Gali, Ambala City and for recovery of rent and mesne profits.

The case of the plaintiff is that he is co-owner and landlord of the suit property along with his wife Shanti Devi. They had purchased the suit property in the shape of *Kholas* vide registered sale deed dated 15.04.1998. Thereafter, he raised construction thereon in the year 1999 after getting the site plan sanctioned from Municipal Council, Ambala City on 25.01.1999. Later on, one room on the ground floor of the property was converted into the shops and the defendant took the shop in dispute bearing No.3 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 defendant did not pay the rent w.e.f. 01.01.2000. 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 of maintainability, jurisdiction, mis-joinder of necessary parties; that plaintiff has not come to the Court with clean hands and that suit is false and frivolous.

On merits, the defendant took the plea that wife of the plaintiff has not been impleaded as party to the suit. Further, the plaintiff had not purchased suit property in shape of '*Khola*' rather he purchased the same in the shape of shop. The plaintiff had carried out only minor repairs as the same was not a fresh construction. He also stated that he used to pay rent @ ₹500/- per month w.e.f. 1.9.2000. 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 tenancy of the defendant was terminated vide notice dated 1.6.2001? OPP
- 2.If Issue No.1 is proved, whether the plaintiff is entitled to possession of the suit property? OPP
- 3.Whether the Court has no jurisdiction to entertain and try the present suit? OPD
- 4.Whether the suit is bad for non-joinder of

necessary parties? OPD

5. Whether the suit is not properly valued for the purpose of Court fee? OPD

6. Relief.

The learned Court of First Instance after considering the material and evidence available on file decided Issues No.1 to 5 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 two months. The plaintiff was also held to be entitled to recover a sum of ₹5,000/- on account of arrears of rent for illegal use and occupation of the premises in dispute and mesne profits @ ₹500/- per month from the date of filing of suit till date of receiving vacant possession vide judgment dated 20.03.2010.

Being aggrieved of passing of said judgment and decree dated 20.03.2010 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, Ambala but remained un-successful. Hence, the present Regular Second Appeal before this Court.

When the present Regular Second Appeal was admitted, no substantial question of law was framed. Even no substantial question of law has been placed on record

during the pendency of appeal. Learned counsel for the appellant took the plea that the substantial question of law can be settled even at the stage of Regular Second Appeal if the Court comes to the conclusion that there are some substantial questions of law which require determination and decision by the Court.

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 Khairati Lal, Building Clerk from Municipal Council, Ambala City, who deposed before the Courts below that Mohan Lal had purchased the shop and renovated the same. The construction of two shops was raised by the plaintiff after getting the site plan sanctioned from the Municipal Council. Om Parkash son of Ram Chand appeared as DW-2 and deposed that this property was old when the same was purchased by the plaintiff. After the purchase of the property in dispute, the plaintiff has done small repairs in the same. He had never demolished it nor he had raised any construction.

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 entire property 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.

Learned Courts below have rightly placed reliance upon testimony of Om Parkash DW2 when he admitted in his cross-examination that the plaintiff had only plastered the old walls and put lintel thereon.

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 (Rent) 388, **Ravinder Pal Vs. Statish Kumar and another**, 2009(4) CCC 356 (P&H) and **Gajjan Singh Vs. Virsa Singh and others** 2007(3) CCC 312 (P&H).

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.

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

(SHEKHER DHAWAN)
JUDGE

February 05, 2015
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