

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

**1. RSA No.2423 of 2013 (O&M)
Date of Decision: 19.10.2015**

Hari ChandAppellant

Versus

**Sham Lal and others
.....Respondents**

2. RSA No.1846 of 2013 (O&M)

Saroj Rani and anotherAppellants

Versus

**Aggarwal Dharamshala and others
.....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Vikram Singh, Advocate
for the appellant(s).

- 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?***

RAJ MOHAN SINGH, J.

[1]. By this common judgment two Regular Second Appeals i.e. **RSA No.2423 of 2013** titled as **Hari Chand Vs. Sham Lal and others** and **RSA No.1846 of 2013** titled as **Saroj Rani and another Vs. Aggarwal Dharamshala and others** are being decided.

[2]. Since common questions of law and facts are involved in aforesaid two appeals, therefore, facts are being taken from RSA No.2423 of 2013.

[3]. Plaintiffs are in second appeal in a suit for mandatory injunction, declaration and in the alternative for possession. The plaintiffs claimed permanent injunction restraining the defendants from taking forcible possession of the shop detailed in plaint and from interfering in the possession of the plaintiffs. Plaintiffs pleaded that husband of the plaintiff No.1 and father of plaintiff No.2 is a tenant in the shop for the last more than 30 years at a monthly rate of rent of Rs.110/-. Defendants are bent upon to dispossess the plaintiffs from the shop in question because the husband of the plaintiff No.1 and father of plaintiff No.2 is away and defendants want to take undue advantage of his absence. No ejectment order has been passed against the plaintiffs.

[4]. The suit has been contested by the defendants on all customary pleas, claiming that Hari Chand is a chronic defaulter in payment of rent. He himself surrendered the possession of the shop on 02.12.2001 as he was in arrears of rent for the last 65 months. Defendant is a registered body and is running educational and religious institutions. Hari Chand husband of the plaintiff No.1 and father of plaintiff No.2 negotiated with defendants No.4 and 5 and in lieu of handsome amount, surrendered the possession of the shop. Thereafter, a lease deed was executed in favour of defendants No.4 and 5 after

surrendering the possession voluntarily by Hari Chand. Defendants No.4 and 5 also contested the suit on the ground that Hari Chand was a tenant of defendant No.1 but at the time of filing the suit he was not in possession of the shop in question as he had already surrendered possession in favour of defendant No.1 by virtue of agreement dated 02.12.2001. Defendant No.1 delivered the possession to the defendants No.4 and 5 and defendant No.1 also received Rs.6000/- as rent in advance for the period from 03.12.2001 to 28.02.2002. A sum of Rs.4,25,000/- was paid in cash to Hari Chand by the defendants and the agreement was duly attested by Notary Public. Hari Chand also executed an affidavit to that effect. Civil Suit No.768-A of 2009 has also been filed by plaintiff- Hari Chand seeking decree for mandatory injunction directing the defendants to restore the vacant possession of the shop in question to him and also sought the relief of declaration that the agreement and affidavit dated 02.12.2001 allegedly executed by him and rent receipt dated 07.12.2001 issued by defendant No.3 in favour of defendants No.1 and 2 be declared as null and void and not binding upon his rights.

[5]. Trial Court after appraisal of evidence on record dismissed the suit and appellants remained unsuccessful before Lower Appellate Court as well. That is how the present appeal came to be filed.

[6]. I have heard, learned counsel for the appellants at some length and have also perused material on record.

[7]. The findings have been recorded cumulative in both the suits as issues involved therein are common. The issue with regard to relinquishment of tenancy by Hari Chand after taking sum of Rs.4,25,000/- from the defendants Sham Lal and Ved Parkash is the core issue which has been debated with reference to agreements dated 02.12.2001 and 29.11.2001. Agreement was entered into between the parties in the presence of witnesses namely Anil Sehgal and Bhushan Lal. In order to counter the stand of the defendants Hari Chand took a stand that on 01.12.2001, he was kidnaped by the defendants and was locked in a room and certain documents which were being relied upon by the defendants were got signed by the defendants from him while in captivity. These documents are claimed to be false and fabricated. No amount has been received by him nor the possession of the shop was ever surrendered by him to defendants No.4 and 5 as alleged. Hari Chand claimed that he was in possession of the shop till 06.12.2001 i.e till filing of the Civil Suit No.798 of 2009. The Local Commissioner was also appointed on 06.12.2001 and as per the report of the Local Commissioner, plaintiff-Hari Chand was in possession of the shop in question but he was dispossessed on 07.12.2001 forcibly by the defendants. The stand of the Hari Chand has been duly

countered by the defendants on the ground that agreement was entered into on 29.11.2001 vide which the amount of Rs.50,000/- was paid by the defendants No.4 and 5 to the plaintiff and possession was surrendered by the Hari Chand on that day. Thereafter on 02.12.2001, another agreement was entered into between the parties i.e. plaintiff and defendants No.4 and 5 in the presence of Anil Sehgal and Bhushan Lal and remaining amount was paid to the plaintiff by defendants No.4 and 5. Thereafter, rent deed was executed between Aggarwal Dharamshala (defendant No.1) and defendants No.4 and 5. Defendants No.4 and 5 paid advance rent @ Rs.2000/- per month to defendant No.1. Since then defendants No.4 and 5 are in possession of the shop in question as tenants and plaintiffs have no concern whatsoever with the suit property.

[8]. Hari Chand was the tenant of Aggarwal Dharamshala is an admitted fact. The question of relinquishment of tenancy by Hari Chand along with possession in favour of defendants No.4 and 5 on 02.12.2001 has been answered in the context of documents Exs.D1, D6 and D7 which were executed by plaintiff Hari Chand for a consideration of Rs.4,25,000/- out of his free will.

[9]. The report of Local Commissioner Ex.P1 though found plaintiff to be in possession on 06.12.2001 but alleged dispossession on 07.12.2001 shown in the report can be seen in

the context where Local Commissioner was supposed to go beyond the scope of reference made to him. If Documents Exs.D1, D6 and D7 are perused, the plaintiff-Hari Chand has only taken a stand that he was kidnaped by the defendants. No Police Report, nor any complaint whatsoever has come on record against the alleged kidnaping of Hari Chand by defendants. No witness has been examined on this issue nor the factum of kidnaping has been proved on record with reference to any material. Hari Chand himself admitted in his cross-examination that police post is adjoining to the shop of the plaintiff but the matter was not reported by him to the police neither in the context of kidnaping nor in the context of forcible dispossession of Hari Chand till date.

[10]. Apparently, stamp papers were used on Ex.D7 which were purchased on 29.11.2001. The stamp papers used on Ex.D6 were purchased on 01.12.2001 and stamp papers used on Ex.D7 were purchased by Hari Chand himself and he signed the register of the stamp vendor at point Ex.D1/1 and Ex.D6/1. Further affidavit Ex.D1 and agreement Ex.D6 were duly attested by the Notary Public who has appeared as DW 8 in the witness box. Admittedly, plaintiff-Hari Chand was in arrears of rent for 65 months on 30.11.2001 and the same is alleged to have been paid on 30.11.2001 vide Ex.D3. Original receipt Ex.D3 has not come on record. Had he paid the rent himself then he might be

possessing the original receipt. The original receipt has been produced by defendant No.1-Dharamshala. This fact itself shows that on 30.11.2001, agreement Ex.D7 was entered into between plaintiff and defendants No.4 and 5 and plaintiff-Hari Chand received Rs.50,000/- as part payment of total amount of Rs.4,25,000/-. The amount was adjusted by defendants No.4 and 5 against the arrears of rent which were to be paid to Dharamshala on account of arrears of rent.

[11]. In view of aforesaid impeachable evidence on record, relinquishment of tenancy is writ large on the face of the record. During course of argument, learned counsel for the appellants has also admitted that the tenancy in favour of Hari Chand was not created by way of any instrument, therefore, surrendering of the same is not required to be done by way of any registered document. Even tenancy of this type can be surrendered by way of executing affidavit.

[12]. Both the Courts have rightly concluded this case of relinquishment of tenancy. Agreements were executed between the parties and payment was received by Hari Chand. The story propounded by Hari Chand in the context of kidnaping and his forcible dispossession has not been incorporated on record with reference to any cogent evidence. Both the Courts have recorded firm findings of fact on these pertaining aspects.

[13]. No law point worth consideration is involved nor it has

been shown that the judgments and decrees passed by the Courts below are suffering with any perversity or are the result of any misreading of evidence.

[14]. Looking from any angle, the judgments and decrees passed by the Courts below cannot be faulted with. Resultantly, finding no merit in these appeals and the same are accordingly dismissed.

19.10.2015

prince

**(RAJ MOHAN SINGH)
JUDGE**