

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3248 of 2013(O&M)
Date of decision : August 17, 2015

Smt. Bago and others

..... Appellants

Versus

Surinder Kaur @ Shindo and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Parminder Singh, Advocate
for the appellants.

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Ragav Gulati, Advocate
for the respondent No.8.

Mr. S. K. Virk, Advocate
for respondent No.9.

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 has knocked the door of this court by challenging the judgments and decrees of the courts below whereby suit of possession measuring 8 Marlas of land (hereinafter called 'suit property') as described in the head note has been decreed and the appeal filed against the same was also dismissed.

Learned counsel appearing on behalf of the appellants-defendants submits that suit for possession was not maintainable as the suit property falls within Municipal limits of Phagwara and there was relationship of landlord and tenant. The

respondents-plaintiffs have cleverly branded the appellants-defendants as licensee and accordingly in order avoid rigor of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called as 'the Act') had filed a suit for possession.

He further submits that the rent receipts Ex. DW-3/1 to Ex. DW3/9 have been produced on record which ex facie prove that there was a relationship of landlord and tenant. Therefore, suit cannot be decreed.

Dr. Anmol Rattan Sidhu, learned Senior counsel appearing on behalf of the respondents-plaintiffs submits that as per the agreement dated 5.7.1994 the property in dispute was given to the appellants-defendants by way of permissive possession. Rightly so the suit for possession was filed after seeking revocation of the license, therefore, there is no illegality, much less perversity in the impugned order.

I have heard learned counsel for the parties and appraised the paper book.

The argument of Mr. Parminder Singh, learned counsel appearing on behalf of the appellants at the first instance looked attractive but on going through the alleged documents i.e. rent receipts it shows that few of the rent receipts have not been issued by the plaintiffs-respondents but have been issued by one Chander Shekhar and few are blank. In essence, the rent receipts have not been proved in accordance with law, thus the same is not sustainable.

It is now a settled law that mere exhibition of the

document would not disprove its proof. I would be committing fallacy in case, I do not refer to the terms and conditions of the agreement, copy of which has been annexed as Annexure A-1.

“We, Darshan Lal son of Bayanta Ram and Ram Kishan @ Butta s/o Rewal, R/o Khera Road, Phagwara, First Party.

Daulat Ram son of Garib Dass resident of Kirti Nagar, Phagwara, Tehsil Phagwara, Second Party.

That the second party has running a factory in the name of Kirti Foundary and the factory has been installed/running on the place of first party and share holder of which also is first party. The second party shall bound to remove the malba/scrap from the land of first party up to the date 7.5.1995 and the vacant possession shall bound to returned to the first party and at the point of time i.e. 7.5.1995 when second party would vacate the possession, then first party bound and responsible to pay Rs.20,000/- (Twenty Thousand). If the possession would not delivered in the fix time, then the first party entitled to get it evicted the second party from the court. In between the period of one year there is no fault in respect of possession of second party. In case of lapse of any condition of agreement, either of the party would have to pay an amount of Rs. 1Lac as penalty and it has agreed that either of the party would through the court seek compliance of the conditions and right and after 5.7.1995 the first party will not file any case in the court and if the second party would institute any case against the first party, the same would be considered false and without any basis. Therefore the agreement has written so as came in work on need. Dated 5.7.1994.

First Party
Darshan Lal
Second Party

sd/- Daulat Ram

Witness 1. Tirlok Singh
2. Jagir Singh son Sarwan Singh

From the plain and simple language of the agreement, there is no ambiguity that possession of the appellants-defendants was permissive. Since the suit has been filed in the year 2002, therefore, the remedy for the licensor was to seek possession by way of affixing ad valorem court fee instead of relief of mandatory injunction. The suit has been filed in the year 2002 rightly so, it has been decreed.

The contents of the agreement do not accord the parties to the /is the status of landlord and tenant. Thus, the argument of learned counsel for the appellants that the eviction of the appellants-defendants could not be sought in the manner it has been done except under the grounds of eviction under the Rent Act are not sustainable, is hereby rejected.

Both the Courts below have rendered a finding of fact and law after appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 17, 2015
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