

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1585 of 2015 (O&M)
Date of Decision: July 02, 2015

Leela Ram

...Appellant

Versus

Vijender Kumar Sanghi

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.N.S.Shekhawat, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-defendant Leela Ram has filed this regular second appeal against respondent-plaintiff Vijender Kumar Sanghi, challenging the impugned judgment and decree dated 28.01.2011 passed by learned Civil Judge (Junior Division) Narnaul, vide which the suit filed by the plaintiff-respondent for possession was decreed and also the judgment and decree dated 02.02.2015 passed by learned Addl. District Judge, Narnaul, vide which the appeal filed by the appellant-defendant was dismissed.

The brief facts of the case are that plaintiff-respondent Vijender Kumar Sanghi filed a suit against defendant-appellant Leela Ram for possession claiming rent from 01.04.1999 to 30.04.1999 along with use and occupation charges amounting to ₹2000/- per month from 01.12.1999 to till the receiving of the possession by the

plaintiff. The case of the plaintiff is that one shop along with chabutra as described in the plaint was given to defendant on 20.01.1995 on rent @ ₹1000/- per month and rent note was executed on 20.01.1995 and possession was delivered. The defendant after receiving of the notice has not handed over the vacant possession of the shop.

On the other hand, the case of the defendant in the written statement is that the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 are applicable with respect to shop in dispute, so the plaintiff is not entitled to take possession of shop in dispute vide alleged notice. The defendant has already paid rent from 01.04.1999 to 30.04.1999 and of subsequent period against receipts and no rent is due towards him. On merit, it is denied that defendant has executed any rent note dated 20.01.1995 in favour of the plaintiff. It is further pleaded that defendant wanted to start vegetable shop, for which he had contacted Ramsharan Joshi, to know best mahurat, who told the defendant to execute the rent note on 13.05.1994 at 7.00 a.m. and to start the shop on the day at 11.00 A.M. being best mahurat. It is also stated that the status of defendant is that of contractual tenant. Rent note form like Ex.DW3.A was executed which was signed by defendant.

Issues were framed and both the parties led evidence. Learned Civil Judge (Junior Division) Narnaul, after discussing the evidence in detail, decreed the suit of the plaintiff terminating the tenancy and held that the defendant is liable to handover the vacant possession of the shop to the plaintiff within two months from the date

of decree and also liable to pay rent and further use and occupation charges. Aggrieved from the above-said judgment and decree, an appeal was filed by the defendant before learned District Judge, Narnaul and learned Addl. District Judge, Narnaul vide judgment and decree dated 02.02.2015 upheld the findings of learned Civil Judge and dismissed the appeal.

Aggrieved from the above judgments and decrees passed by the Courts below, present regular second appeal has been filed by the defendant-appellant.

At the time of arguments, learned counsel for the appellant contended that the plaintiff-respondent has not placed on record the best evidence as to when the shop was constructed, therefore, he argued that the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 are applicable with respect to the shop in dispute and the civil court has no jurisdiction to decide the matter. He further argued that before the amendment of the plaint, the plaintiff has alleged that rent note was executed in year 1994, which was later on got amended to 20.01.1995. This fact given in the earlier plaint supports the defendant's version. Learned counsel for the appellant also argued that written arguments were given to learned Addl. District Judge, Narnaul in detail but learned Addl. District Judge has not given the findings after considering each and every argument given in the written arguments, therefore, the matter should be remanded back being a non-speaking judgment.

I have heard learned counsel for the appellant and have gone through the record.

From the record, first of all, I find that the findings given by the Courts below are concurrent. Nothing has been pointed out as to how these findings are against the evidence or which evidence has been misread by the Courts below. Nothing has been argued as to how the judgments and decrees passed by the Courts below are perverse.

From the perusal of the record, I find that the finding of facts have been given by the Courts below correctly, as per evidence and law and no substantial question of law arises in this regular second appeal. The defendant is alleging that he has taken shop on rent in the year 1994, therefore, he is to prove that fact as it is settled law that a party who is alleging specific fact, has to prove the same. The plaintiff has alleged that rent note has been executed on 20.01.1995 and he has proved the same. After the Court allowed the amendment of the plaint, the averments in the previous plaint cannot be read. The remedy with the defendant was to challenge that order before the competent court if the amendment was wrongly allowed by the Court or caused any prejudice to the defendant. Now, the counsel for the appellant cannot rely upon the averments given in the previous plaint, which have already been allowed to be amended by the Court. Now, the amended plaint is to be seen and is to be taken as pleadings of the plaintiff.

As regarding the fact that plaintiff has not brought the best

evidence to show that the shop was constructed before 1989, I find that the Court is to decide the civil rights of the parties on preponderance of evidence. The defendant-appellant has also not led any evidence to show the contrary and to prove the same. The evidence produced by the parties has been discussed in detail by the Courts below. The defendant has relied upon the document Ex.DW3/A, alleged to be form like rent note but this document is only signed by the defendant. In the present case, relationship of landlord and tenant has been admitted between the parties. There is also no dispute regarding rent note. The plaintiff has also duly proved the notice given to the defendant for termination of tenancy. The Court also held that even the filing of the suit, will amount to termination of tenancy. The relationship of landlord and tenant is admitted, rent note is not disputed and the plaintiff has proved the rent note by bringing cogent evidence on record and legal notice has also been duly proved to be served upon the defendant and further the plaintiff has also relied upon the documents i.e. maps of plaintiff Ex.P-1 and P-2 prepared on 04.01.1989 and sanctioned on 13.05.1989 as per Ex.P-5, and map of plaintiff's brother Ex.P-3 prepared on 13.03.1989 and sanctioned on 12.05.1989 as per Ex.P-3. The evidence of the plaintiff regarding the construction from December 1989 to March 1990 and the facts deposed by the plaintiff have not been rebutted by any cogent evidence. The mere fact that the plaintiff has not proved any income tax return and had also not proved completion certificate of Municipal Committee after the completion of construction, will not be

sufficient to disbelieve the case of the plaintiff.

As regarding the findings given by learned Addl. District Judge, Narnaul, I find that it is not necessary for the Court to give the findings on each and every line given in the written arguments. It is also not necessary that if the written arguments are of 30 pages, then the judgment must be of more than 30 pages. I have perused the judgment passed by learned Addl. District Judge, Narnaul. In no way, the judgment can be held as non-speaking nor it can be held that appellate Court has not applied the judicial mind.

In view of the above discussion, I find that the findings of the Courts below are concurrent, as per evidence and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

July 02, 2015
Vgulati

(INDERJIT SINGH)
JUDGE