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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.6212 of 2015 (O&M)
Date of Decision: 23.12.2015

Amit Kumar

.....Appellant

Vs

Harbhajn Singh (deceased) through LRs

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rakesh Gupta, Advocate
for the appellant.

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.

CM No.15645-C of 2015

Prayer in this application is for making the deficiency of court fee good.

For the reasons mentioned in the application, which is supported by an affidavit, the deficiency in making the court fee good, is allowed.

Application stands disposed of.

RSA No.6212 of 2015 (O&M)

[1]. Defendant is in second appeal in a suit for possession and in alternative for recovery of rent @ Rs.700/-

per month for the last five years.

[2]. Plaintiff filed suit for possession of the shop alleging that shop is owned by him and he had given the shop on rent to the defendant on rent @ Rs.700/- per month, who is running business in the name and style Golden Watch Company in the premises.

[3]. The remaining property of the plaintiff is in possession of the plaintiff, where he has constructed his house. Previously rate of rent was Rs.600/- per month, but later on it was increased to Rs.700/- per month from January 2005.

[4]. Plaintiff served a notice under Section 106 of the Transfer of Property Act (hereinafter referred to as 'the Act') on the defendant and demanded possession of the shop in question from the defendant besides claiming arrears of rent from January 2005 to till date after terminating the tenancy of the defendant on 29.10.2009.

[5]. The suit was contested by the defendant by taking all the pleas. Defendant alleged that he had taken the shop on rent from Surjit Singh, brother of the plaintiff in the year 2000 orally @ Rs.300/- per month as rent of the demised premises in the presence of his brother Anil Kumar and one Ram Pal. Since then he is doing business in the shop in question under the name and style Golden Watch Company.

[6]. Defendant further alleged that the rent was increased from Rs.300/- per month to Rs.400/- per month about three years ago in the presence of Ram Pal and defendant had already paid rent to Surjit Singh upto 31.12.2009. Thereafter Surjit Singh refused to accept the rent and pressurized the defendant to increase the rent from Rs.400/- per month to Rs.1000/- per month. In this way relationship of landlord and tenant was denied by the defendant.

[7]. After framing of issues both the parties led their respective evidence to prove their case.

[8]. Trial Court decreed the suit and the defendant remained unsuccessful before the lower Appellate Court as well.

[9]. I have heard learned counsel for the appellant.

[10]. Learned counsel for the appellant contends that there is no relationship of landlord or tenant. Plaintiff through his attorney Surjit Singh (brother of the plaintiff) reiterated the facts given in the plaint. Plaintiff is proved to be owner of the property in question, wherein defendant is running a shop under the name and style Golden Watch Company.

[11]. Surjit Singh has been examined as PW-1. He has admitted that he is power of attorney holder which was executed on 06.11.2009 Ex.P-1. The witness has proved the site plan Ex.P-2, *jamabandi* for the year 2006-07 as Ex.P-3 and legal

notice issued by the plaintiff to the defendant Ex.P-4.

[12]. Plaintiff has also examined Kehar Singh and Kishore Khela as PW-2 and PW-3 respectively.

[13]. Statement of Surjit Singh assumes significance in the context of relationship between the parties. The witness has admitted that he is not the owner of the property in question, rather his brother Harbhajan Singh @ Bhajan Singh is owner of the same. Earlier the properties between the brothers were joint. However in partition, he got the house and and his brother Harbhajan Singh @ Bhajan Singh got the shop in question. The partition was mutually done about 7-10 years back. The shops allotted to third brother were sold by him.

[14]. Kehar Singh PW-2 also corroborated the stand of the plaintiff. He admitted that the properties were partitioned amongst the brothers about 4-5 years back. The partition was oral. The shop in question was given on rent to the defendant. Harbhajan Singh used to come to India of his own.

[15]. PW-3 Kishore Khela prepared the site plan after visiting the spot and proved the same as Ex.P-2 on record.

[16]. On the other hand defendant got himself examined as DW-1 and took the same stand as taken in the written statement. Anil Kumar has been examined as DW-2 who has also deposed in favour of the defendant.

[17]. Defendant has admitted in his cross-examination that house of Surjit Singh is situated in the village. This fact has been corroborated by DW-2 Anil Kumar as well. The stand of the defendant that the shop in question is owned by Surjit Singh has been negated by Surjit Singh himself while appearing as PW-1. Defendant could not produce any document showing ownership of Surjit Singh. No rent deed has been placed on record, nor any evidence has come on record to corroborate the version of the defendant.

[18]. Admittedly the defendant is tenant in the shop. Once the plaintiff himself as well as Surjit Singh have deposed in respect of ownership of the shop in question, it was for the defendant to rebut the plea raised by the plaintiff particularly when defendant is proved to be tenant over the shop in question as Surjit Singh admitted the ownership of the plaintiff.

[19]. The production of original bills in the name of Surjit Singh does not mean that plaintiff is not the owner of the shop in question. It has come in evidence that earlier the shop along with other properties were joint between the brothers and later on it came to the share of the plaintiff.

[20]. Provisions of the Transfer of Property Act in terms of Section 106 of the Act are not applicable in the State of Punjab, however only equitable principles are applicable. Issuance of

notice under Section 106 of the Act is not mandatory, rather intention of the landlord to eject the tenant is to be inferred. Even filing of suit amounts to serving of notice under Section 106 of the Act.

[21]. This Court while relying upon **V. Dhanapal Chettiar vs. Yesodai Ammal, 1979(2) RCR (Rent) 352** has observed that by not taking a particular ground of ejectment in the advance notice, if served at all, will not debar the landlord from seeking ejectment on that ground. While relying upon the aforesaid judgment this Court held that merely because in the notice of termination some grounds were not disclosed, the same has no effect and will not debar the landlord from getting ejectment of the tenant. Further the view expressed in **M/s Nopani Investments (P) Ltd., vs. Santoksh Singh (HUF), 2008(1) RCR (Civil) 270** is on the same premise, that notice to quit under Section 106 of the Act is not required to be served on the tenant as filing of eviction suit under general law is itself a notice to quit on the tenant.

[22]. This Court has further relied upon the view expressed in **Harikesh vs. Smt. Narain Devi (Widow) and Ors., (2010) 157 PLR 506** to hold that if the suit has been filed under general law then it is a notice to quit and no notice is required to be issued under Section 106 of the Act for getting the tenant

evicted. The question arises whether the contractual tenancy between landlord and tenant is liable to be terminated merely by filing of an eviction petition?

The Hon'ble Apex Court in the aforecited judgment held that no notice to quit is required under Section 106 of the Act when the suit is filed under general law for getting the respondent evicted.

[23]. Since the tenancy was a monthly tenancy, even issuance of notice on 29.10.2009 giving clear 15 days time to vacate the premises was lawful notice and suit itself was filed on 24.11.2009, hence the notice Ex.P-4 satisfies the requirement of Section 106 of the Act for all abundant caution.

[24]. Learned counsel for the appellant contends that issue No.1 as formulated by the trial Court does not talk about possession, since declaration is being sought, therefore, the entire suit is misplaced.

[25]. I have considered the plea. The word 'declaration' seems to be the result of clerical omission as the basic frame of the suit is for possession. The pleadings in the plaint and the stand taken by the defendant in the written statement are in furtherance of suit for possession and not that of declaration. The trial Court discussed the evidence taking into consideration the nature of suit for possession.

[26]. Issue No.1 was held to be in favour of the plaintiff. Issue No.2 was decided against the defendant and suit was held to be maintainable. Under issue No.3, it was observed that the counsel for the defendant did not press this issue, nor any evidence was led. Therefore, this issue was also decided against the defendant. Resultantly, the trial Court vide judgment and decree dated 25.07.2013 decreed the suit for possession and the lower Appellate vide judgment and decree dated 08.05.2015 affirmed the same.

[27]. Learned counsel for the appellant further relied upon the statement of PW-1. Perusal of the statement does not show any divergence from the pleaded case of the plaintiff. The stand of PW-1 has been proved to the hilt, that the suit property belongs to the plaintiff and he being the attorney filed the suit. Even otherwise the tenant cannot deny the title of the landlord which is proved to be owner in view of the stand taken by Surjit Singh PW-1 and other evidence on record.

[28]. Considering the controversy in question, I do not find it to be a fit case for consideration of substantial questions of law as framed in para No.4 of the grounds of appeal by the appellant.

[29]. With regard to question Nos.(a) and (b), re-appreciation of evidence is not required to be done in the

second appeal, nor the issuance of notice under Section 106 of the Act can be held to be mandatory in nature, particularly when provisions are not applicable in the State of Punjab, however only equitable principles are applicable. Question No.(c) is a question of fact only which has been corroborated by the statement of Surjit Singh PW-1 to whom status of ownership was being conferred by the defendant himself.

[30]. As regards question No.(d), since both the parties knew the case of each other, therefore, the issues framed by the trial Court are sufficient to answer the controversy involved between the parties. Question No.(e) is also a question of fact and not of law.

[31]. In view of the concurrent findings recorded by both the Courts below, I am of the view that no indulgence can be granted in the Regular Second Appeal, consequently the same is dismissed being devoid of merits.

[32]. Since the main appeal is dismissed on merit, there is no need to adjudicate upon the application for condonation of delay of 52 days in filing the appeal.

December 23, 2015

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**(RAJ MOHAN SINGH)
JUDGE**