

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 6412 of 2014 (O&M)
Date of Decision : 23.09.2015

Subhash Chand Garg

....Appellant

Versus

Lajpat Rai and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

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

Surinder Gupta, J.

This Regular Second Appeal has been filed by Subhash Chand Garg-defendant no. 2 in the suit filed by Lajpat Rai-respondent no. 1, seeking ejectment of defendants from the shop situated within the jurisdiction of *Gram Panchayat*, Fatehpur, District Kaithal, forming part of *Khewat* No. 347/620, Rectangle No. 216, *Killa* No. 20 as per *jamabandi* for the year 1965-66, which was decreed by the Court of Additional Civil Judge (Senior Division), Kaithal and the appeal against the same was dismissed by the Additional District Judge, Kaithal.

2. The case of plaintiff-Lajpat Rai, in brief, is that the shop in dispute was let out to Karam Chand Garg-defendant no. 1 in the year 1991. The rent was increased from time to time and since 25.05.2004, defendant no. 1 was paying the rent @ ₹ 32,500/- per annum. Defendant no. 1 had taken the shop on rent for carrying out the trading business of *khal*, *churri*/cattle feed etc. In the year 2005, defendant no. 1-Karam Chand Garg sublet the shop to his brother Subhash Chand Garg-defendant no. 2 (appellant) without the consent of plaintiff-respondent and

handed over the possession and control of the premises to defendant no. 2-appellant. The statutory notice dated 05.11.2005 was served on defendants no. 1 and 2 through registered post, UPC, courier service at their residential and business addresses. Defendant no. 2-appellant took the delivery of notice. However, the notice sent to defendant no. 1 was received back with the remarks "left without address".

3. The notices sent through other sources were refused by family members of defendant no. 1 and they gave address of defendant no. 1 as Jagdamba Market, Sultanpuri. Notice was again sent at the said address through courier but defendant no. 1 refused to accept the notice. Defendant no. 1 availed six months time from 25.11.2015 to 24.05.2006 after service of notice but has not vacated the premises.

4. Defendant no. 1 did not appear to contest the claim of plaintiff-respondent and was proceeded *ex parte*.

5. Defendant no. 2-appellant contested the claim of plaintiff-respondent *inter alia* pleading that the premises falls within the Municipal limits of Pundri, as such the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 are attracted for seeking ejectment of appellant from the demised premises on the ground of subletting. It was averred that the premises was rented out to M/s Aggarwal Trading Company in the year 1991 @ ₹ 20,000/- per annum of which defendant no. 2-appellant is sole proprietor. Defendant no. 1-Karam Chand Garg is the real brother of defendant no. 2-appellant and had also worked with him and there was never any subletting of the

premises by defendant no. 1 in favour of defendant no. 2-appellant. The appellant had been paying rent regularly and the tenancy has never been terminated. The plaintiff-respondent reiterated his case in the replication.

6. Learned Additional Civil Judge (Senior Division), Kaithal decreed the suit and ordered ejectment of the appellant from the demised premises. The plaintiff-respondent was also allowed mesne profit @ ₹ 32,500/- per annum alongwith interest @ 10% per annum from the date of filing of the suit till its realization.

7. The plaintiff-respondent had claimed eviction on two grounds;

- (a) that the premises in dispute was let out to defendant no. 1-Karam Chand Garg; and
- (b) that defendant no. 1-Karam Chand Garg has sublet the same to his brother defendant no. 2-Subhash Chand Garg.

8. It was averred that the demised premises is situated within the revenue estate of village Fatehpur, while the defendant no. 2-appellant contested this plea with averment that the same is situated within the Municipal limits of Pundri. On appraisal of evidence including the demarcation report, sale deed and oral testimony of witnesses, learned Civil Judge (Senior Division), Kaithal observed that the premises is situated within the revenue estate of village Fatehpur and no evidence was led by defendant no. 2-appellant that it was situated within the Municipal limits of Pundri. Defendant no. 2-appellant, though,

challenged the boundaries of demised premises as shown in the site plan Ex. P-22 but had not produced any site plan to show the correct location of the premises as per his averments. The demarcation report produced on file by the plaintiff-respondent was sufficient to locate the premises. The Court was not required to go into the technicalities regarding demarcation report as it was not the case of boundary dispute.

9. This fact is not disputed that the premises was rented out in the year 1991. The rent receipts relied upon by defendant no. 2-appellant Ex. D-2 and Ex. D-3 were discarded as it was not clear regarding the premises to which it pertain and the receipts Ex. D-5 and Ex. D-6 pertained to the year 1988 while the premises was let out in the year 1991. The receipts about the business of Aggarwal Trading Company Ex. D-7 and Ex. D-8 were also discarded on the ground that defendant no. 2-appellant had tried to project the purchase of *khal* from Hisar vide these receipts on 09.04.1999 and 20.05.1999 when he himself was producing *khal* while expelling oil from the mustard. Another factor which weighed before the Court below while holding defendant no. 1 to be a tenant in the suit property was the document relating to release of electric connection in the demised premises. The documents produced and proved on record show that the electric connection was taken by defendant no. 1 as tenant in the demised premises.

10. From the facts proved on record and oral testimony of witnesses, the Courts below held as proved that the premises was let out to defendant no. 1.

11. Learned counsel for the appellant has argued that in fact defendants no. 1 and 2 are the partners of firm M/s Aggarwal Trading Company. The premises was let out to the firm, as such the carrying of business in the firm of defendants no. 1 and 2 in no manner make out any ground of subletting. Learned counsel has further argued that the shop is situated in the area of Municipal Committee, Pundri, as such the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 were attracted to this case.

12. On examination of both the pleas raised by learned counsel for the appellant I find no weight therein. As already discussed, the plaintiff-respondent has proved that the premises is situated within the revenue limits of village Fatehpur and defendant no. 2-appellant has not been able to produce any evidence to show that this premises is situated within the Municipal limits of Pundri.

13. So far as, letting out the premises to the firm M/s Aggarwal Trading Company is concerned, this fact is also not proved. No evidence was produced that M/s Aggarwal Trading Company is a partnership firm. Admittedly, defendant no. 2-appellant is a sole proprietor of the firm and he has not been able to prove on record that the premises was let out to the firm. In the affidavit Ex. P-30 submitted by defendant no. 1 at the time of taking electric connection in the demised premises, this fact was specifically mentioned therein that he (defendant no. 1) is owner of Aggarwal Oil Mill and had taken electricity connection being tenant in the shop in dispute. The sale deed Ex. P-23 and

Ex. P-24 and the mutation Ex. P-33 produced and proved on record by plaintiff-respondent proved that the demised premises was situated in the revenue limits of village Fatehpur.

14. On perusal of paper-book and the judgment of Courts below I find no legal or factual infirmities therein calling for interference. No question of law, what to talk of substantial question of law requiring determination, arises in this appeal, which has no merit.

Dismissed.

September 23, 2015
jk

(SURINDER GUPTA)
JUDGE