

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

**CM-5494-C-2017 in/and
RSA No.6319 of 2016 (O&M)
Date of Decision: May 09, 2017**

Surinder Kumar

..Appellant(s)

Versus

Vijay Kumar deceased through his LRs & Ors.

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Gaurav Sharma, Advocate
for the appellant.

ANITA CHAUDHRY, J.

CM-5494-C-2017

For the reasons set out in the application, same is allowed as prayed for and hearing of the main appeal is preponed for today itself.

CM-16570-C-2016

For the reasons set out in the application, same is allowed as prayed for and delay of 9 days in re-filing the appeal is condoned.

RSA No.6319 of 2016

This is the defendant's appeal assailing the judgment of both the Courts below.

It would be relevant to notice the facts first. Lal Chand – defendant was a tenant on a shop owned by Megh Raj. On the death of Megh Raj, his widow and children became owner of the property. The plaintiff Vijay Kumar purchased the shop from Soma Devi and others in 1998. Lal Chand fearing dispossession filed a suit for permanent injunction against Vijay Kumar and Amrit Lal pleading that the shop was on rent with him. That suit was decreed. The plaintiff preferred an appeal and during the pendency of appeal a compromise was effected and possession was handed over to the plaintiff. Lal Chand also made a statement before the Court on 17.02.2005. The plaintiff claimed that defendants no.1 & 2 namely Surender and Binder had turned dishonest and had close contacts with the police and in connivance with Lal Chand forged the record and obtained electricity connection and a telephone connection in their name and filed a suit for permanent injunction with a view to grab the property. It was pleaded that Surender Kumar had no concern with the property and he never came in possession of the shop as a tenant and the relationship of landlord and tenant did not exist.

Defendant no.3 pleaded that the plaintiff and Amrit Lal wanted to have forcible possession and he had filed suit which was decreed. Thereafter, a compromise was effected. He had pleaded that neither Bhinder Kumar nor Surender Kumar came in possession of the shop nor they were tenants but the key of the shop was obtained by Bhinder Kumar on the pretext that he would return it but thereafter, failed to do so.

Surender Kumar alone contested the suit as thereafter, defendants no.2 & 3 were proceeded ex parte. He claimed that the shop was taken on oral rent from Vijay Kumar in February, 2003 in the presence of three persons and he had taken a electricity connection and a telephone connection and rent had been paid till May, 2005 but no receipt had been executed. It was also denied that the plaintiff had purchased a shop.

The lower Court noticed that the electricity connection as well as the telephone connection had been obtained without obtaining NOC from the owner and there was no rent receipt issued by Vijay Kumar and the possession of the defendant was illegal and there was no relationship of landlord and tenant. The suit was decreed.

Aggrieved with the judgment Surender Kumar alone filed an appeal. The appellate Court noted the following:-

“37. Thus, this witness is completely silent that whether any rent was paid at the time of tenancy or when it was agreed to be paid. No rent receipt regarding payment of rent have been produced on record. No income tax return or account books have been produced on the file to prove the payment of the rent as alleged. This witness has not denied that shop in dispute was on rent with Lal Chand.

38. Defendant no.1 Surinder Kumar himself has appeared as DW4 (wrongly numbered as DW3) but even from his statement, the alleged tenancy is not proved. He has also not given any specific date of creation of the tenancy and has just stated that oral tenancy was created

in February, 2003. he is also silent about any terms and conditions of the tenancy. He has also not deposed about mode of payment of rent. He has admitted that he knew defendant Lal Chand who is their neighbourer. He could not tell who was in possession of the disputed shop prior to him. He had seen the said shop for the first time in February, 2003 and prior to that he had never seen the said shop. He has feigned ignorance as to which business Lal Chand was carrying on.

39. He has not denied that a criminal case was registered against plaintiff Vijay Kumar and his brother Amrit Lal on the complaint of Lal Chand, regarding forcibly taking away his articles from the said shop. He has not denied that his brother Varinder Kumar was a prosecution witness in the said case. He has stated that there was no electric connection in the disputed shop when it was taken on rent by him. He did not obtain any consent from Vijay Kumar for obtaining electric connection in the said shop. He did not know if any house tax is levied on the said shop since he had not received any notice. The telephone connection which was installed in the said shop, was earlier installed in the shop situated near Bus Stand, Barnala. He has admitted that he had nowhere entered the payment of rent, made to Vijay Kumar. He did not know when Vijay Kumar became owner of that shop and who was owner earlier to Vijay Kumar.

41. No rent note of the shop, in which business of the said firm was being run has been produced on record by the defendant no.1. Though he claims himself to be the sole proprietor of that firm but no record of the said firm has been produced by him.”

After thoroughly examining the evidence, the appeal was dismissed. The findings recorded by the trial Court were affirmed.

Counsel for the appellant submits that there was an oral tenancy and the appellant was in possession since 2003 and he had taken electricity and telephone connection and that connection was still in existence. It was urged that appellant's possession had been admitted and he could not be dispossessed.

I am unable to agree with the submission made on behalf of the appellant. The plaintiff and Lal Chand were litigating over the suit property. A suit for injunction was filed by Lal Chand since Vijay Kumar was interfering in his possession. After the suit was decreed, an appeal was preferred and it was in February 2005 that a compromise was effected. For the appellant to say that he had taken the property on rent in 2003 was rightly found to be false. The documents made available by the appellant before the trial Court show that no NOC was taken from the owner nor the status of the applicant was mentioned in the application. The finding recorded by the trial Court cannot be faulted with when it held that the appellant had illegally entered the property. The appellant had failed to prove that the relationship of landlord and tenant existed. There was no rent receipt. The findings recorded by the Court below are affirmed.

The appeal is dismissed.

May 09, 2017

(ANITA CHAUDHRY)
JUDGE

sunil

Whether speaking/reasoned : Yes

Whether reportable : Yes