

110.

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

RSA-1828-2017 (O&M)

Date of decision: 05.05.2017

MAHENDER SINGH

... Appellant

versus

NARAIN (DECEASED) TH. HIS LRS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. J.P. Sharma, Advocate,
for the appellant.

HARI PAL VERMA, J.

CM-4450-C-2017

Prayer in the application filed under Section 149 CPC is to
make good the deficiency in the court fee.

For the reasons stated in the application, same is allowed
and the applicant-appellant is permitted to make good the deficiency in
the court fee.

RSA-1828-2017

The appellant-defendant-Mahender Singh son of Duli
Chand, has filed the present Regular Second Appeal against the
judgment and decree dated 30.09.2016 passed by learned Additional
District Judge, Narnaul, whereby his appeal against the judgment and
decree dated 21.01.2013 passed by learned Additional Civil Judge
(Senior Division), Narnaul, was dismissed.

Briefly stated, the respondent-plaintiff, namely, Narain (since deceased, through his LRs) (herein referred as 'plaintiff') had filed a suit for possession against the appellant-defendant, namely, Mahender Singh (herein referred as 'defendant') in respect of a godown, as detailed in the plaint. It is the case of the plaintiff that a pucca godown which is fixed with shutter, is situated at Rewari Road, Narnaul. Initially, the same was owned and possessed by Babu Lal, Sanwal Ram, Ramesh Chander (sons) and Ram Bai (wife) of late Parbhu to the extent of 1/4th share and Narayan, Hanuman (sons) and Badam (daughter) of Mohan Lal to the extent of 3/4th share. However, in a family compromise, the said godown fell into the share of the plaintiff and, therefore, the plaintiff is the owner/ landlord of that godown. It was submitted that the said godown had been newly constructed on plain land in the month of October 1995 and the same was rented out to the defendant @ ₹3,000/- per month and in this regard, a rent note dated 10.09.1996 was also executed and the tenancy thereof was agreed to commence from 01.09.1996. The tenancy period was fixed for three months and no right was given to the tenant-defendant in respect of roof. It was agreed that the tenant shall neither sublet the godown nor would make any alteration or addition and it shall be used exclusively for the purpose of godown. He had further submitted that since the building was constructed in the month of October, 1995, therefore, the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 were not applicable. The tenancy of the

defendant had been terminated by efflux of time. Therefore, the defendant is in illegal possession of the premises in dispute. Still the plaintiff served a notice dated 06.09.2005 to the defendant through his counsel asking him to handover the vacant possession of the godown to the plaintiff within 15 days from the date of receipt of notice and also to pay amount of compensation for use and occupation since 06.09.2005. Although notice had been served upon the defendant, but he, instead of vacating the premises, replied that notice on 21.09.2005 stating that he had received only two blank summons in the envelope. Thereafter, the plaintiff replied that letter of the defendant clarifying that he had issued a legal notice on 06.09.2005 for vacating the premises and for paying the remaining amount of compensation. He has further averred that now since the defendant is in illegal possession of the premises, he has no right to retain the possession, whereas the plaintiff has every right to get the possession of the godown as well as to recover compensation @ ₹5,000/- per month w.e.f. August 2005. Since the defendant was asked several times to vacate the godown but of no avail, hence, the suit for possession was filed.

On notice, defendant appeared, filed written statement and contested the suit by taking preliminary objections that the suit premises is situated within the municipal limits of Narnaul and house tax is applicable and further, the relationship of parties is that of landlord and tenant, hence, the civil court has no jurisdiction to entertain the matter as the Haryana Urban (Control of Rent and

Eviction) Act, 1973 is applicable. The plaintiff had no locus standi, suit is bad for non-joinder of necessary parties, plaintiff had not come to the court with clean hands, rather he had suppressed the material facts i.e. he had not placed on record any document showing date of completion of godown nor any completion certificate had been produced. Furthermore, no family partition deed had been produced or got registered which could show the plaintiff as a landlord. The tenancy of the defendant is of permanent nature till his death and initially, he was paying rent @ ₹2,500/- per month which was later on increased to ₹3,000/- per month in the presence of Samar Singh son of Sahi Ram. The disputed premises is very old, constructed more than 10 years ago. However, on merits, it was submitted that the suit property is very old and the defendant is tenant over that property for last 20 years and he was carrying on his business of sugarcane and banana. The assertion of the plaintiff that he had become exclusive owner through family compromise was denied. It was denied that the godown was constructed in the month of October, 1995 and also denied that any rent note dated 10.09.1996 was ever executed by the defendant. However, it was submitted that if the plaintiff in collusion with his man, had manipulated for getting such rent deed allegedly being signed by defendant, then the same is fraudulent one, without disclosing the contents and therefore the rent deed is not binding upon the defendant. It was further alleged that no terms & conditions were ever agreed by the defendant as have been mentioned in the plaint and further, the

tenancy of defendant has never been terminated either by so-called efflux of time or by serving of notice. The tenant is still in legal possession. It was denied that the plaintiff had ever served any alleged notice dated 06.09.2005 to the defendant through his counsel. In fact, the envelope was containing only two blank summons and on receipt of the same, he immediately sent a legal notice to the plaintiff asking him as to why he had sent those blank summons and no such alleged reply dated 23.09.2005 was received by the defendant from the plaintiff's counsel. He had further denied that the plaintiff was entitled to recover ₹5,000/- per month as compensation.

The trial Court held that the plaintiff had been successful to prove that the suit property was constructed in the year 1995 and at the time of filing of the suit, 10 years of construction had not been completed. Therefore, the provisions of Haryana Rent Act are not applicable to the suit property. The trial Court further held that while filing his written statement, the defendant had not disputed the relationship of landlord and tenant and in his cross-examination, he had admitted that the suit property was let out to him by Narayan and further, the witnesses of defendant had admitted this fact that earlier the suit property was owned and possessed by some other co-sharer also, but ultimately, the same had fallen into the share of Narayan. In support of his contention, the plaintiff had produced on record a copy of settlement deed (Ex.PW4/A) which had been executed among his family members and as per said settlement deed, the godown in

question had fallen to the share of Narayan. Furthermore, Section 116 of the Indian Evidence Act, 1872 creates an estoppel upon the tenant from denying the title of his landlord. The trial Court reached to the conclusion that the plaintiff had been successful to prove himself to be the owner of the disputed godown. Further, the plaintiff had also proved his case that the defendant had been served with notice under Section 106 of the Transfer of Property Act thereby terminating the tenancy of defendant and calling upon the defendant to vacate the premises. But despite that, he did not vacate the same and hence, the plaintiff was entitled for possession of the disputed godown as shown in the site plan (Ex.PW8/A). It was further held that since the defendant was in unlawful possession of the godown, therefore, he was liable to pay compensation to the plaintiff for use and occupation charge to the tune of ₹3,500/- per month. However, the defendant was held entitled to set off any amount already paid during the pendency of the suit against rent or use and occupation charges. Accordingly, vide judgment and decree dated 21.01.2013, the trial Court allowed the suit of the plaintiff and a decree for possession of suit property i.e. godown was passed in favour of plaintiff and against the defendant, directing him (defendant) to vacate the godown and to deliver the peaceful vacant possession of the said godown to the plaintiff within three months from the date of decree.

Aggrieved against the aforesaid judgment and decree dated

21.01.2013 passed by the trial Court, the defendant filed an appeal.

However, the said appeal was also dismissed by the Lower Appellate Court vide judgment and decree dated 30.09.2016.

It is in the aforesaid circumstances, the defendant (appellant herein) has filed the present Regular Second Appeal.

Learned counsel for the appellant-defendant has argued that the plaintiff had failed to prove his case by way of cogent evidence and, therefore, his suit was liable to be dismissed. There is no cogent evidence that the godown was constructed in the month of October, 1995 as neither any completion certificate from the Municipal Corporation, Narnaul was produced nor any witness was examined to prove the construction. Even though, no specific date of completion had been mentioned and once, it had been come in the evidence that the defendant was tenant since 1983 and the suit was filed after the expiry of 10 years of the construction, thus, the suit was not maintainable. But both the courts below have committed a gross error in not appreciating the evidence properly. The respondent-plaintiff had not proved himself as owner of the godown and the alleged partition deed was not registered one and hence, the same cannot be read into evidence. Further, the notice sent by the plaintiff for termination of tenancy under Section 106 of the Transfer of Property Act had not been proved and, therefore, the suit was not maintainable. But the courts below have committed gross error in not appreciating the evidence properly. The respondent-plaintiff had failed to prove that he was the owner of the godown and the alleged partition deed was not registered one and

therefore, in the absence of registration of partition deed, the same cannot be read into evidence. The evidence led by the appellant-defendant has not been properly considered that the godown was constructed 24-25 years ago and the appellant-defendant is a tenant since then. He has further argued that during the pendency of the appeal before the Lower Appellate Court, the appellant-defendant had moved an application under Order 6 Rule 17 CPC seeking amendment in the written statement, but the same was not decided which has caused great prejudice to the appellant-defendant.

I have heard learned counsel for the appellant.

The respondent-plaintiff had filed a suit for possession against the appellant-defendant in respect of a godown which was given on rent to him. After termination of tenancy period which was fixed for three months, a legal notice was served by the respondent-plaintiff upon the appellant-defendant asking him to handover the vacant possession of the godown within a period of 15 days from the date of receipt of notice, but the appellant-defendant did not vacate the premises, rather replied that the envelope was containing two blank summons. It is not in dispute that the pucca godown which is fixed with shutter is in possession of the appellant-defendant as a tenant and, therefore, the relationship between the parties as a landlord and tenant has not been denied by either of the parties. The appellant-defendant has pleaded that he is in possession of the suit property since 1983, but at that point of time, no such godown ever existed there, rather a kiosk

was lying on the spot. Rent note (Ex.P1) clearly provides that the tenancy of the shop/godown in question would commence from 01.09.1996 and the tenancy period was fixed for three months and the rate of rent was fixed as ₹3,000/- per month. The said rent note had duly been proved by the plaintiff. The contention of the appellant-defendant that no such rent note was ever executed, was set aside from his own testimony when he (defendant) in his cross-examination had admitted that the rent note was executed by him and he had affixed his signature on the agreement/rent note (Ex.P1) after understanding its each and every content. In this manner, the terms & conditions of the agreement (Ex.P1) were agreed by the appellant-defendant. When the rent note was executed, a recital was made therein that the construction of godown had been completed in the month of October, 1995 and this fact was admitted by the defendant. Hence, the admission of defendant is the best evidence to conclude that the premises in question was completed in the month of October, 1995. There is a concurrent finding of fact recorded by both the courts below that the suit property was constructed in the year 1995 and at the time of filing the suit, 10 years of construction had not been completed, therefore, the provisions of Haryana Rent Act are not applicable to the suit property. So in order to get possession of the suit property, the plaintiff had served a notice under Section 106 of the Transfer of Property Act. The plea of the appellant-defendant that the alleged notice contained only two blank summons, cannot be accepted as PW6-Keshave Sanghi, Advocate, had

categorically deposed that on 06.09.2005, he had sent a legal notice through registered post and the same was received by the appellant-defendant.

No other point is argued.

No substantial question of law arises in the present regular second appeal.

In view of above, this Court does not find any reason to interfere in the present regular second appeal which is based on concurrent findings of facts. Accordingly, the present Regular Second Appeal is dismissed.

(HARI PAL VERMA)
JUDGE

05.05.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No