

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

**RSA No. 2035 of 2017 (O & M)
Date of Decision:-01.05.2017**

Raj Pal

...Appellant

Versus

Smt. Surjeet Kaur and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. J.P. Sharma, Advocate
for the appellants.

Mr. Parminder Singh, Advocate
for the respondents-caveators.

HARI PAL VERMA J.

The appellant-defendant has filed the present regular second appeal against the judgment and decree dated 17.2.2017 passed by learned Additional District Judge, Karnal, whereby his appeal against the judgment and decree dated 09.5.2016 passed by the Civil Judge (Junior Division), Karnal, was dismissed. The trial Court has decreed the suit of respondent/plaintiff seeking possession and recovery of arrears of rent.

Briefly stated, the respondents-plaintiffs (hereinafter called 'the plaintiffs') had filed a suit for possession of the property i.e. House No.235, Gali No.8, R.K. Puram, Karnal directing the appellant-defendant to vacate the house in question and to hand over the vacant possession of the suit

property to the plaintiffs. Plaintiffs have further prayed for a decree for recovery of an amount of Rs.1,02,000/- being arrears of rent @ Rs.3000/- per month w.e.f. 1.7.2010 to 30.4.2013 besides interest @ 18% per annum over the arrears of rent. The plaintiffs have also sought for a decree of mesne profit for the use and occupation of the house in question after the termination of the tenancy till the vacation of the suit property and to hand over the vacant possession of the suit property to them.

As per the plaint, the plaintiffs have claimed themselves as owners of the suit property, which was leased to appellant-defendant on the monthly rent of Rs.3,000/-. Though no agreement was reduced into writing as the plaintiffs had faith in the defendant. But the appellant-defendant paid rent only for the initial three months and thereafter had not paid any rent. The defendant had neither paid the arrears nor vacated the premises in question.

Plaintiffs are old persons and are currently living in Delhi. They are suffering great hardships and inconvenience and for that purpose they need the suit property for their personal use. Accordingly, the notice under Section 106 of the Transfer of Property Act was sent to the appellant-defendant on 26.4.2013 thereby terminating the tenancy of the defendant, but despite termination of the tenancy, they did not vacate the suit premises. Hence, the plaintiffs had filed the suit for possession.

On notice having been issued, the appellant-defendant has appeared and filed written statement taking preliminary objections regarding maintainability, locus-standi, cause of action and abuse of process

of law. However, on merits it was admitted that the agreed rate of rent is Rs.1500/- per month and he had been regularly paying the rent to the plaintiffs, but the plaintiffs have not given any receipt regarding the rent received by them.

The suit filed by the plaintiffs was decreed by the Civil Court. In the suit, the relationship of landlord and tenant was not disputed. The plaintiffs failed to prove that the agreed rate of rent between the parties was Rs.3000/- per month and therefore, in the absence of any evidence and considering the admission of the appellant-defendant the Court was inclined to accept the agreed rate of rent as Rs.1500/- per month. Since the property in dispute is urban and is covered under the general law of Transfer of Property Act, a notice under Section 106 of the Transfer of Property Act was issued by the plaintiffs asking the defendant to vacate the premises in question. The said notice was admittedly received by the appellant-defendant on 26.4.2013 to which he has given a reply. On the issue of personal necessity, the same is governed with the provisions of Transfer of Property Act. Once it is proved that the tenancy has been terminated as per the mandate of Section 106 of the Transfer of Property Act, nothing more was required to be proved by the plaintiffs. Accordingly, the suit was decreed.

The plea raised by the appellant-defendant that he has been paying the rent to the plaintiffs continuously @ Rs.1500/- per month but he has failed to adduce any receipt in this context was duly considered and rent was fixed @ Rs.1500/- per month. Accordingly, the trial Court decreed the

suit with costs and the plaintiffs were held entitled for decree of possession of the suit property with a direction to the appellant-defendant to vacate the suit property and to hand over the vacant possession of the same to the plaintiffs. The plaintiffs were also held entitled as arrears of rent for the period from 01.7.2010 to 30.4.2013 @ Rs.1500/- per month and also the mesne profits @ Rs.1500/- per month from 1.5.2013 till the date of institution of the suit. The trial Court has also held that the plaintiffs are also entitled to claim interest @ 12% from the date of suit till the passing of the decree and further interest @ 6% from the date of decree till its realization.

Against the judgment and decree dated 09.5.2016 passed by the trial Court, first appeal was filed by the appellant-defendant, however, the appeal was also dismissed by learned Additional District Judge, Karnal vide judgment and decree dated 17.2.2017.

It is against the aforesaid circumstances whereby the suit filed by the plaintiffs was decreed by both the Courts below, the appellant-defendant has filed the present regular second appeal impugning the judgments and decrees passed by both the Courts below.

Learned counsel for the appellant-defendant has argued that the Courts below have committed illegal error while entertaining the suit filed by the respondents-plaintiffs because the Civil Court has no jurisdiction to try the suit where the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 are applicable. The building in question is in an urban area, therefore the impugned judgment and decree dated 09.5.2016 passed

by the trial Court and the judgment and decree dated 17.2.2017 passed by the lower Appellate Court are liable to be set aside. He has further argued that the appellant-defendant has been paying the rent continuously, but the landlord had not issued any rent receipt. Initially the plaintiffs have claimed the rent @ Rs.3000/- per month, but the same was not accepted by the trial Court, therefore, the plaintiffs have not approached the Court with clean hands and the suit was liable to be dismissed on this score alone.

Mr. Parminder Singh, learned counsel for the caveator has justified the judgments and decrees passed by the Courts below and has argued that the plaintiffs have not paid the rent since 1.7.2010 to 30.4.2013 and also for the subsequent period i.e. from 1.5.2013 till date.

I have heard learned counsel for the parties.

The respondents/plaintiffs have filed the suit for possession claiming as owners of the house in question. The plot, over which the house was constructed was purchased by the plaintiffs vide registered sale deed No. 7857/1 dated 08.2.2008 and mutation No.3306 was entered and sanctioned in the names of plaintiffs. It is only thereafter they have raised the construction of a residential house. Therefore, the plea raised by learned counsel for the appellant-defendant that the property is governed under the provision of Haryana Urban (Control of Rent & Eviction) Act, 1973, has rightly been negated by the Courts below, as the construction of the plot was completed only after 08.2.2008 i.e. the date when the plot was purchased. Whereas the suit had been filed on 3.7.2013. Once it is held that the Rent Control Act is not applicable, the plaintiffs have rightly

invoked the remedy of Civil suit by filing the instant civil suit for possession. Before filing the suit, plaintiffs had issued required notice under Section 106 of the Transfer of Property Act, dated 26.4.2013. The relationship of landlord and tenant between the parties is not in dispute. The issue, whether the appellant-defendant has paid the rent to the plaintiffs and his tenancy has been terminated in a legal manner, has been duly considered by the Courts below. Though the plaintiffs had claimed rent @ Rs.3000/- per month but no such evidence was adduced in support of this rate of rent. But as the defendant himself had admitted the rent @ Rs.1500/- per month, the trial Court accepted the rent to be Rs.1500/- per month. The defendant was in arrears of rent from 1.7.2010 to 30.4.2013, though he has submitted that he was paying the rent regularly, but the plaintiffs were not issuing the rent receipt to him, a concurrent finding has been recorded by the Courts below. No prudent person can keep on paying rent except against a receipt if dispute regarding property has started. The appellant-defendant has not been able to prove by leading any cogent evidence that he has paid the rent. No such other document has been brought on record which could prove that the defendant was paying the rent to the plaintiffs. Neither in the written statement nor in his affidavit Ex.DW1/A, the defendant has furnished any detail which may prove the fact that rent was being paid by him. Thus, the defendant has failed to establish that rent was ever paid by him. The defendant has taken advantage of the fact that the plaintiff No.1 and her husband were residing in Delhi, whereas plaintiff No.2 was residing at Karnal. But the defendant

did not specifically name as to whom he was paying the rent. Even during pendency of the present lis which was filed on 3.7.2013, nothing has come on record to show that the appellant-defendant had ever paid any rent during the proceedings pending before the Courts below.

Thus, this Court is convinced that the appellant-defendant is adamant to harass the plaintiffs. Therefore, this Court finds that it is a fit case where the appeal deserves to be dismissed with costs.

This Court does not find any illegality in the judgments and decrees passed by the Courts below which based on concurrent findings of facts.

No other point is argued.

Since no substantial question of law is involved in the case, hence, present appeal is dismissed with costs, which is quantified as Rs.10,000/-, which shall be formed as part of the decree.

May 01, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No