

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.5104 of 2017 (O&M)
Date of decision: 14.11.2017

Sukhdev Singh

..... Appellant

Versus

Baljinder Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Kuldeep V. Singh, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in regular second appeal against the judgment passed by learned First Appellate Court.

Plaintiff had filed a suit for possession of the suit property on which a Dhaba (eating joint) is being run by the defendant. Plaintiff also prayed for recovery of rent from June 2008 till the filing of the suit and further mesne profit @ Rs.1,000/- per month. It is the case of the plaintiff that he had taken on lease land measuring 06 kanals from Mohant Piare Dass Boghpur who was owner of the property. It was further pleaded that the defendant was permitted to run a Dhaba on the vacant land as the petrol pump was installed only on 3.5 kanal of land. Defendant had failed to pay rent since June 2008 and hence tenancy was terminated by notice dated 07.09.2010.

In the written statement, defendant pleaded that there is no relationship of landlord and tenant between the parties and the land was owned by one Bakshi Ram son of Gobind Ram and he was paying the rent to the aforesaid Bakshi Ram.

Learned First Appellate Court after examining the evidence

including lease deed Ex.P-1 on the file held that the property was leased out to the plaintiff by its owner and hence decreed the suit filed by the plaintiff. The Court held that the defendant failed to prove any evidence on the file to prove that Bakshi Ram was ever the owner of the property or he was paying any rent or lease money to Bakshi Ram.

Learned counsel for the appellant has submitted that there is violation of Order 7 Rule 14, CPC as the lease deed was not produced along with the plaint. He has also submitted that only eviction proceedings could be initiated against the appellant as there was relationship of landlord and tenant between the parties. He has further submitted that Ex.P-1, the lease deed has not been proved on the file.

I have heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below as well as some documents produced by him during the course of the arguments.

Order 7 Rule 14 provides that while filing the pleadings, the parties should produce all the documents relied upon by it. However, sub-rule 3 of Rule 14 of Order 7 permits the parties to produce documents subsequently with the leave of the Court. Plaintiff had pleaded that he was a lessee of Mahant Piara Dass Boghpur. Merely because the lease deed which is a registered document was not produced with the plaint but was produced later on which was permitted by the Court, would not itself be sufficient to defeat the right of the plaintiff.

Second argument of learned counsel for the appellant is that once it was the case of the plaintiff that there was relationship of landlord and tenant, therefore, only eviction proceedings under the Punjab Tenancy Act could be filed. The argument is wholly misconceived. The property in dispute is not a agriculture land. It is admittedly being used for running a Dhaba

(eating joint). The protection as provided under the Punjab Tenancy Act or Punjab Security of Land Tenure Act would not be applicable to such a tenant. Still further, the defendant-appellant has himself denied the tenancy. The tenancy had further been terminated by serving a notice under Section 106 of the Transfer of Property Act. The relationship of landlord and tenant if any had come to an end. Therefore, the suit for possession was maintainable.

Last argument of learned counsel for the appellant is that the defendant-appellant had objected to the production of Ex.P-1, the registered lease-deed, in evidence on the ground of mode of proof. Therefore, Ex.P-1 cannot be read in evidence.

I have considered the submission. No doubt, at the time of the document was produced in evidence, the counsel for the defendant-appellant had objected to the admission of the document with respect to mode of proof, however, a reading of the judgments passed by the Courts would show that such argument was not pressed by the counsel for the appellant at the time of final arguments. At this stage, appellant cannot be permitted to raise this argument.

No other argument was addressed by learned counsel for the appellant.

For the reasons recorded above, this Court does not find any good ground to interfere with the finding of fact arrived at by the First Appellate Court which is neither shown to be erroneous nor perverse.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

14.11.2017
Dinesh Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No