

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

**RSA No.35 of 1997 (O&M)
Date of Decision:06.12.2018**

Ved Parkash Arya

...Appellant(s)

Versus

Madan Mohan Singh

...Respondent(s)

RSA No. 2610 of 2002 (O&M)

Madan Mohan Singh

...Appellant(s)

Versus

Ved Parkash Arya

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.M.L.Sarin, Sr. Advocate with
Ms.Hemani Sarin, Advocate for the appellant in
RSA No.35 of 1997.
Mr.Arun Jain, Senior Advocate with
Mr.Amit Jain, Advocate for the appellant in
RSA No.2610 of 2002.
Mr.Ashwani Chopra, Sr. Advocate with
Mr.Amrik Grewal, Advocate for the respondent in
RSA No.35 of 1997.
Mr.C.B.Goel, Advocate for the respondent in
RSA No.2610 of 2002.

ANIL KSHETARPAL, J.

This order shall stand disposed of two RSA No.35 of 1997 and
RSA No.2610 of 2002, as both these appeals are inter connected and parties
to the dispute are common.

RSA No.35 of 1997 (O&M)

Ingenuity of the human mind while making effort to circumvent the laws has no bounds. This is a classic case which proves that a landlord would go to any extent to circumvent the provisions of the rent protection law, i.e. The East Punjab Restriction Act, 1949.

- (i) Whether the court while adjudicating upon the dispute must go to the route of the case and unearth the evil design by lifting the veil?
- (ii) Whether the first appellate court, before setting aside a judgment passed by the learned trial court, is required to analyse the reasons given by the learned trial court and after critical appraisal thereof give its own reasons while disagreeing or setting aside the reasons given by the learned trial court?

Some facts are required to be noticed. Respondent Madan Mohan Singh (Appellant in RSA No.2610 of 2002 and respondent in RSA No.35 of 197) was allotted a Booth No.186, Sector-35 D, Chandigarh on hire purchase basis.

As per the allotment letter, allottee could neither transfer his rights under the lease directly or indirectly nor could use the Booth for any other purpose. Clauses 12 and 13 of the allotment letter is extracted as under:-

“You will have no right to transfer your rights under this lease directly or indirectly. You will not sublet the premises or any part thereof. If there is any dispute as to whether the premises have been sublet or not the decision of the Chief Administrator, Chandigarh, on the point shall be binding on the parties. No fragmentation of the building be permissible.

The covered passage (Varandah) and the area in front of the shop shall not be encroached upon and used or allowed to

be encroached upon or used for any purpose other than a public road.”

It may be noted that this allotment was made in lieu of surrendering temporary stall in Shastri Market. As per the allotment letter, allottee was required to pay monthly rent of Rs.184.34/-.

It is the case of the plaintiff that he and defendant entered into a Partnership on 18.12.1976. The relevant clauses, i.e. 1 to 4, 9, 10, 11 and 14 of the Partnership-Deed are extracted as under:-

“1. That the partnership shall be run in the name & style of M/s Ved Parkash Cycle Store with its ordinary place of business at booth No.186, Sector 35, Chandigarh and such other place as may be agreed by the parties from time to time.

2. That the parties shall carry on the business of cycle repairs etc. and such other business may be decided by the parties from time to time.

3. That the profits and losses of the partnership shall be shared in the following ratio:-

1. Name (Ist party) 75%

2. (Second party) 25%

4. That the regular books of accounts shall be maintained with year ending 31st March as are generally maintained in a business of like matter & such records shall be available to the parties at all reasonable times for inspection and obtaining copies of accounts.

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9. That the first party shall be the managing & working partner and the second party shall be a sleeping partner in the regular course of business and shall render free hands to the first party in running the business of the partnership.

10. That the booth No.186 Sector-35 Chandigarh, in which the business of the firm shall be carried on as the absolute

ownership of the second party and at no point of time and in any case the Ist party shall have any claim on the ownership of the property and shall have no right of tenancy in case of dissolution.

11. That in case of dissolution the first party shall have no claim on the goodwill assets and liabilities of the firm and shall retire from partnership business after receiving his credit balance as per his ledger account as on the date of retirement and shall have no right.

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14. If and when the partnership deed is dissolved then the first party will have to vacate the said booth without any hitch and have no claim on the said booth that he has to remove goods from the premises. The Ist party will not object to it no matter whether the other shop etc. Otherwise he will have to Rs.One hundred per day as damages. At the time of vacation I will have to pay all the breakage electric wiring and other of the building to pay by me before vacation.”

(Note: Ist party in the partnership deed is the alleged tenant)

The plaintiff claims that the defendant pursuant to the partnership came in possession of the Booth and opened a shop in the name of Parkash Cycle Store, i.e. middle name of defendant. It is further alleged by the plaintiff that the defendant dissolved the partnership by sending a notice dated 4.10.1979 and thereafter the defendant-appellant started working as an employee under the plaintiff-respondent initially @ Rs.8/- per day which was thereafter increased to Rs.250/- per month and thereafter increased to Rs.350/- per month. The defendant continued to work under the name of Parkash Cycle Store.

The Estate Officer of the U.T. Administration issued a notice on 8.7.1980, calling upon the plaintiff to show-cause why the Booth be not

resumed since it is being used for purpose other than which was allotted. It is further case of the plaintiff that an affidavit dated 20.8.1980 was submitted by the defendant in which it was stated by him that he was not a tenant but partner and thereafter he is now working under the employment of the plaintiff. The Booth was resumed on 9.9.1980. The defendant-appellant (alleged tenant) only filed an appeal. The owner did not file any appeal against resumption of the property. In the meantime, proceedings under the Public Premises Act were initiated and the defendant-appellant was ordered to be evicted by the Estate Officer on 9.2.1984. The defendant-appellant only filed an appeal, while the owner, i.e. plaintiff-respondent, did not file any appeal against the order of eviction before the Additional District Judge, Chandigarh. The appeal filed by the defendant-appellant was dismissed by the Additional District Judge. In the aforesaid proceedings also, plaintiff-respondent took a stand that the defendant-appellant is an employee.

On the other hand, the appeal filed against resumption of the Booth was also dismissed by the Chief Administrator, U.T. Chandigarh on 24.9.1985. The defendant-appellant filed CWP which was allowed and the order passed by the Chief Administrator was set aside, directing him to pass the orders on merits. The defendant-appellant also filed a writ petition, challenging the order passed by the Estate Officer as well as Additional District Judge, while ordering his eviction under Public Premises Act. In the meantime, after the order passed by this Court, while deciding a writ petition directing the Chief Administrator to order to decide the appeal on merits, the Chief Administrator allowed the appeal filed by the defendant-appellant and restored the Booth while setting aside order of resumption of

the Booth. It may be noticed that in these proceedings plaintiff-respondent submitted before the Court that the defendant-appellant has no locus standi to file the appeal as he is only an employee. It may further be noticed that the Chief Administrator restored the Booth on the undertaking given by the defendant-appellant that misuse has been stopped. The writ petition filed by the defendant-appellant against the orders passed under the Public Premises Act was dismissed as infructuous, in view of the order of the Chief Administrator, restoring the Booth.

Once the plaintiff failed to get the defendant-appellant evicted from the Booth in question by misusing the process of law i.e. allowing the property to be resumed and thereupon getting Ved Parkash Arya evicted under the Public Premises Act, he filed a suit for mandatory injunction, directing the defendant-appellant to hand over possession of the Booth with the assertion that the defendant-appellant was only an employee and his services had already been terminated.

The suit was contested by the defendant-appellant and he denied that he was ever actually employee of the plaintiff. It was pleaded that in fact he was a tenant in the Booth in question and partnership deed as well as defendant being shown as an employee were sham documents only to avoid resumption of the property in question.

The learned trial court, after appreciating the evidence, recorded the findings of fact that partnership was in fact a sham transaction. The defendant-appellant was declared to be in possession as a tenant. Consequently, the suit for mandatory injunction was dismissed. However, in appeal, learned first appellate court has chosen to reverse the judgment of the learned trial court and decreed the suit filed by the plaintiff.

The learned first appellate court heavily relied upon the order passed by the Additional District Judge, while dismissing the appeal against the order of eviction passed under the Public Premises Act. The learned first appellate court has held that a definite finding has been arrived at by the Additional District Judge that the defendant-appellant is only an employee. The learned first appellate court further wrongly recorded that it is the defendant-appellant who had filed copy of the affidavit which in fact was filed by the plaintiff-respondent. The learned first appellate court further misread that before the Chief Administrator, the defendant-appellant had taken a stand that he was merely a servant, which is against the record. The learned first appellate court also erred in noticing that the order passed by the Additional District Judge, dismissing the appeal filed against the order of eviction under the Public Premises Act as also the order passed by the Chief Administrator had not been challenged. In fact both the orders were challenged before the High Court in the writ petitions as noticed above. The learned first appellate court further committed an error in observing that the learned trial court had even audacity to comment upon para 23 of the judgment passed by the Additional District Judge, while deciding the appeal arising from the eviction under the Public Premises Act.

Still further the judgment passed by the learned first appellate court is based upon conjectures and surmises. The learned first appellate court has also drawn adverse inference on account of non-production of the accounts books by the defendant-tenant. In fact the judgment passed by the learned first appellate court is also contradictory inasmuch as in some paragraphs the defendant-appellant has been referred to as tenant, whereas in some paragraphs, he has been referred to as an employee. However, no

finding has been given that the defendant-appellant is a licensee.

In the present case, certain facts have come on record which clearly prove that the partnership-deed as well as subsequent employment was only a camouflage to avoid resumption of the property in dispute. The reasons for arriving at such conclusion are as under:-

- (i) *On careful reading of the allotment letter, it is apparent that the plaintiff could not transfer his rights as a lessee directly or indirectly. He was not even permitted to sublet the premises.*
- (ii) *In the partnership deed, it is clear that the defendant-appellant was having 75% share as per clause 3, whereas 25% share was with the plaintiff-respondent. Still further it was provided that the defendant-appellant, who was the first party in the partnership deed would be managing as a working partner and second party i.e. plaintiff-respondent would be a sleeping partner. Still further, on careful reading of clause 14, it is apparent that on dissolution of partnership, first party, i.e. defendant-appellant will have to vacate the said Booth and remove his goods from the premises, in other words, all the goods stored/used for business belonged to the defendant-appellant. Further, it has been provided that the defendant-appellant does not vacate, he will have to pay Rs.100/- per day as damages.*
- (iii) *Although, it is provided in the Partnership-Deed that regular accounts books would be maintained but no books of accounts have been produced. It may be noted that the plaintiff when appeared in evidence has admitted that he used to get regular payment from the defendant-appellant/partnership business but no accounts have been produced.*
- (iv) *Further as per notice Ex.P2, the defendant had issued*

notice to dissolve the partnership on account of marriage of his sister but thereafter the defendant-appellant continued in possession of the premises allegedly as an employee at Rs.8/- per day. In other words, the defendant-appellant who was in partnership to the extent of 75% had started working under the plaintiff-respondent at Rs.8/- per day, although, the alleged partnership has been dissolved on account of the fact that the defendant-appellant is not in a position to continue working on account of marriage of his sister. Still further on reading of partnership-deed, it is clear that the defendant-appellant would not be entitled to claim any goodwill of the partnership. Further, notice Ex.P2, which is allegedly was got served by the defendant on the plaintiff does not bear his signatures and it is not proved that the aforesaid notice was got issued by the defendant. Still further, the alleged affidavit, which has been submitted before the authorities dealing with resumption proceedings and eviction under the Public Premises Act, also proves that the affidavit has been got attested on a previously signed paper. The first page of the affidavit dated 20.8.19280 is not signed by the defendant. Further the affidavit is attested by the same Advocate who issued notice on behalf of the defendant dated 4.10.1979 that partnership firm is being dissolved.

The entire story put forth by the plaintiff does not appeal to reason. Had there been any genuine partnership between the plaintiff-respondent, the terms would not have been as noticed above. Still further, if the defendant-appellant, who was entitled to 75% of the share in the partnership business, was not in a position to work because of marriage of his sister, there is no occasion for him to continue working as an employee

and that also at Rs.8/- per day under the plaintiff-respondent. Still further, entire goods including machines stored in the Booth in question used for running business, admittedly belonged to the defendant-appellant and he was entitled to remove those as per the clause in the partnership-deed.

Apart therefrom clause 14 of the partnership-deed clearly brings the cat out of the bag. It is provided in clause 14 that if the defendant-appellant on dissolution of partnership does not vacate without any hitch and removes his goods from the premises, he will have to pay Rs.100/- per day as damages, which clearly shows and proves what has been concluded above as was found by the learned trial court.

In view of the aforesaid questions of law framed above are answered in favour of the appellant. RSA No.35 of 1997 is allowed. The judgment and decree passed by the learned first appellate court are set aside, whereas that of the learned trial court is restored. Pending application(s), if any, shall also stand disposed of, in terms thereof.

RSA No.2610 of 2002

The plaintiff-appellant had sought decree for permanent injunction and mandatory injunction, directing the defendant from using the Booth in question for cycle repairs.

This Court has concluded that the defendant-respondent is a tenant in the premises in dispute. It is not disputed that as per the amended regulations framed under the Capital of Punjab (Development & Regulations) Act, now change of trade is permissible. Still further, it has come in evidence that the Booth in question is being used since inception for carrying out trading in sale, purchase and repair of cycles.

The learned first appellate court has rightly reversed the

judgment of the learned trial court, while returning a finding that the present suit was barred under Order 2 Rule 2 of the Code of Civil Procedure as also the suit was not maintainable. In any case in view of the judgment passed in RSA No.35 of 1997, holding Ved Parkash Arya, respondent in this appeal, to be a tenant, would be entitled to continue the work and the suit filed by the plaintiff has rightly been dismissed by the learned first appellate court.

In view of the above, RSA No.2610 of 2002 is dismissed.
Pending application(s), if any, shall also stand disposed of, in terms thereof.

06.12.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No