

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.3615 of 1998 (O&M)

Date of decision: 01.12.2018

Kunti Kumari

..... Appellant

Versus

Hem Raj and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Arnav K. Sood, Advocate, for
Mr. Amit Jain, Advocate
for the appellant.

Mr. Sandeep Chhabra, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.2-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court.

Dispute between the parties is whether the alleged license deed Ex.PW-2/3 dated 28.07.1982 is a license or a lease. Undisputed facts are that Ram Kishan was owner of the property. Krishan Kumar father of defendant No.1-respondent No.3-herein and husband of the appellant was tenant after having raised construction of a residential house with his own expenses. Ram Kishan sold the property vide sale deed dated 24.07.1982. The aforesaid sale deed is signed by Krishan Kumar as a marginal witness. In the aforesaid sale deed, it is recorded that cost of construction has been paid and he has surrendered his tenancy. Apart therefrom on 24.07.1982, Krishan Kumar has also executed and got attested an affidavit

acknowledging this fact about surrender of tenancy and receipt of cost of construction. However, the purchaser, the plaintiff-respondent thereafter executed a further alleged license in favour of son of Krishan Kumar dated 28.07.1982. It has come in evidence that the possession was in fact never surrendered and the defendant-appellant continued in possession.

On careful reading of the aforesaid alleged license deed, it is apparent that initially it was titled as lease deed but scored of and written as a license deed. The exclusive possession of the property remained with the defendant-appellant and it was agreed that Rs.1,000/- per month shall be payable. It has further agreed that the property which has been licensed shall not be sub-let. It was further agreed that the license shall be valid only for a period of 3 months whereafter it shall automatically come to an end. Pursuant to the aforesaid document, the appellant, widow of Krishan Kumar and her family remained in possession without any disturbance, although, as per terms of the license, the license had come to an end after expiry of 3 months from the date of alleged license deed i.e. somewhere in the month of end of October 1982. However, the plaintiff for the first time is alleged to have terminated the license by giving a notice Ex.PW-2/5 dated 30.12.1986. Thereafter, he filed a suit for mandatory injunction.

This Court is not intentionally going into the issue regarding whether surrender of tenancy by Krishan Kumar was valid or not keeping in view the fact that this suit can be decided only on the basis of interpretation of the alleged license deed. The alleged license deed has all the features of lease deed. The exclusive possession has been handed over is with the licensee. There is a monthly lease (alleged licence) amount payable. There is further clause that licensee shall not sub-let the premises. Coupled with

this, the family of the appellant was a sitting tenant before plaintiff purchased the property.

The aforesaid issue has already been deliberated upon in more than one judgments passed by the Hon'ble Supreme Court. Reference in this regard can be made to the judgments in the case of Capt. B.V. D'Souza Vs. Antonio Fausto Fernandes, 1989 AIR (SC) 1816 and followed by a detailed judgment passed by the Hon'ble Supreme Court in the case of C.M. Beena and another Vs. P.N. Ramachandra Rao, 2004(3) SCC 595.

In view of the clear mandate of law, no further deliberations are required. The appeal filed by the defendant-appellant is allowed and the suit for mandatory injunction shall stand dismissed. However, it is declared that the defendants are tenants on the premises in dispute under Hem Raj at the rent of Rs.1,000/- per month.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is allowed.

01.12.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No