

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

RSA No.6430 of 2016(O&M)

Date of decision: 29.05.2018

Baljit Kaur

... Appellant

Versus

Veer Pawan Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. BS Baath, Advocate for the appellant.
Mr. DS Pheruman, Advocate for the respondent.

ARUN PALLI, J. (Oral)

The suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 25.09.2015. As even the appeal preferred against the said decree failed, and was dismissed on 21.07.2016, the appellant-defendant is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for possession by way of ejectment of the defendant from the residential house shown in green colour in the site plan appended with the plaint, comprised in khasra No.69/4, situated at Budha Theh (Beas), Tehsil Baba Bakala, District Amritsar. Briefly, the case set out by the plaintiff was that he happened to be the owner of the suit property and the defendant was inducted therein as tenant @ Rs.1600/- per month. However, vide notice Ex.P5, the tenancy was terminated. The defendant was alleged to be in arrears of rent w.e.f. 01.02.2010 to 30.04.2012, and since neither did the defendant vacate the premises nor cleared the arrears, thus, the suit.

In defence, it was pleaded by the defendant that the suit property was actually owned by her late husband and post his death, she become the owner thereof. Further, her husband had constructed the suit property in the year 1990, and even his voter identity card was made at the said address in the year 1995. Even, a telephone connection bearing No.95340 was also installed in his name in the suit property. In any case, she had even perfected her title by prescription/adverse possession.

On a consideration of the matter in issue, and the evidence on record, both the Courts concurrently concluded that premises in question was let out to the defendant @ Rs.1600/- per month, pursuant to the writing Ex.P2. None other than the defendant herself conceded in her cross-examination that the writing Ex.P2 was scribed by her son Gagandeep Singh and she even identified his writing. Although, she denied her signatures appended on Ex.P2 at point A, but the plaintiff proved the execution of the said document by examining its attesting witness, namely, Kartar Singh. In any case, the burden of proof to show that the writing Ex.P2 did not bear her signatures or it was a forged and fabricated document was upon the defendant, which she failed to discharge for lack of cogent evidence. No hand writing expert was examined. Therefore, the adverse inference was liable to be drawn against her. Not just that, the Court compared the signatures of defendant on Ex.P2 with her admitted signatures on the written statement, her affidavit tendered in evidence to be read as her examination-in-chief, application under Section 151 CPC for adjournment, her reply to the application under Order 11 Rule 12 and 14 CPC moved by the plaintiff, and reached a definite opinion that document Ex.P2 bears the signatures of the defendant at point A. Further, the plea that the suit property was owned

by her late husband, remained unsubstantiated, for no evidence was led to prove his title. Copies of ration card, voter identity card and telephone bills etc. could hardly be termed as documents of title so as to claim ownership. Likewise, her plea that defendant had perfected her title by way of adverse possession also remained unproved in the absence of requisite evidence. On the contrary, copy of jamabandi as also the sale deed Ex.P4 established that the plaintiff indeed was the owner of the suit property, which was situated within the revenue estate of village Budha Theh. Thus, even the provisions of Rent Act were not applicable. Further, as the tenancy was terminated vide notice under Section 106 of the Transfer of Property Act (Ex.P5), the plaintiff was entitled to possession of the suit property by way of ejectment, and also for recovery of rent @ Rs.1600/- per month.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality. Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

29.05.2018
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO