

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

RSA No.527 of 2015 (O&M)

Date of decision: 27.08.2018

Jaspal Singh

..... Appellant

Versus

Baljinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Munish Gupta, Advocate
for the appellant.

None for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while passing a decree for possession as also for recovery of mesne profits.

It is admitted position on the record that the defendant does not have protection of the East Punjab Urban Rent Restriction Act, 1949 as the property in dispute is in rural area.

The plaintiffs who are successor-in-interest of late Sh. Sohan Singh filed a suit for possession, recovery of mesne profit and for permanent injunction claiming that the defendant was inducted as a licensee in a shop @ Rs.900/- per month and the license has been terminated and therefore, they are entitled to protect possession of the property. The defendant contested the suit and pleaded that no doubt, the grand-father of the plaintiffs was owner of the property but in fact, it was leased out to him at the rent of Rs.750/- per month.

Both the Courts below after appreciating the evidence available on the file decreed the suit and decree for possession as well as for recovery of mesne profit has been passed.

Learned counsel for the appellant has raised the following four submissions:-

1. A regular second appeal is pending in this Court wherein a testamentary document in question, on the basis whereof the plaintiffs-respondents had filed a suit, validity thereof is being examined.
2. The plaintiffs have not filed the suit with clean hands.
3. The lease has not been terminated before filing the suit.
4. Learned Courts below have erred in determining the mesne profit at Rs.1500/- per month.

It is in dispute that the plaintiffs are successor-in-interest of Sohan Singh. It is further not in dispute that on the basis of a testament executed by Sohan Singh dated 11.06.2001, the plaintiffs-respondents had succeeded to the property in question and such testament has been upheld by the learned trial Court as well as learned First Appellate Court. In the considered opinion of this Court, mere pendency of the appeal examining the correctness of the judgments passed by the Courts below with regard to title or validity of the testament would not enure to the benefit of the tenant. The tenant is to hand over the possession to his landlord. At present, as per the judgments passed by the Courts, the landlords are the plaintiffs-respondents.

With regard to the second argument, it will be noticed that no doubt, the plaintiffs while filing the suit had claimed that the property was given on license, however, once the Courts have found that the possession

of the defendant-appellant is as a tenant but the tenant is also not entitled to any protection under the Rent Act, the suit filed for possession cannot be dismissed only on the ground that the plaintiffs have sought possession on a different ground.

Next argument of learned counsel is that the lease in favour of the defendant-appellant has not been terminated. It is not in dispute that in the State of Punjab, Section 106 of the Transfer of Property Act has not been extended. The suit was filed in the year 2012. We are in the year 2018. The suit itself is a sufficient notice terminating the tenancy of the appellant.

With regard to last argument, it will be noticed that the aforesaid finding arrived at by the Courts below are purely based on appreciation of oral evidence which is not shown to be perverse.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

27.08.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No