

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

RSA-3448-1999(O&M)

Date of decision:-24.9.2019

Jagdish Parshad

...Appellant

Versus

Loku Ram and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajiv Sharma, Advocate
for the appellant.

Mr.Amit Jain, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that plaintiff
Sh.Loku Ram son of Sh.Gokal Das and his sons S/Sh.Shanti Lal @
Shanti Parkash, Bal Kishan, Pawan Kumar @ Partap and Ramesh
Kumar, all residents of Narnaul had filed a suit against the defendant
Jagdish Parshad seeking his ejectment from the shop fully described

in head-note of the plaint besides craving for recovery of Rs.11,200/- on account of arrears of rent w.e.f. 1.9.1987 to 30.6.1990.

As per version of the plaintiffs, they being owners of the shop in dispute had let it out to defendant vide rent note dated 15.5.1981 on monthly rent of Rs.330/-; the shop is exempt from the provisions of Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter referred to as the Act) since the construction of the shop was completed in the month of April, 1981; since the plaintiffs did not want to keep the defendant as tenant, they served a notice under Section 106 of the Transfer of Property Act upon the defendant sent vide registered AD post on 1.6.1990 terminating his tenancy w.e.f. 1.7.1990 and as the defendant did not comply with the terms of the notice, the plaintiff brought the suit in question.

On getting notice the defendant appeared and filed written statement contesting the suit denying that the shop was let out to him vide rent note dated 15.5.1981. According to him, he had been in possession of the shop prior to that date. However, he admitted the rate of rent. According to him the shop is not exempt from the provisions of the Act and the tenancy cannot be terminated by service of notice and notice served is illegal and against the provisions of Section 106 of the Transfer of Property Act. Refuting the remaining averments in the plaint, the defendant prayed for dismissal of the suit.

The plaintiff had filed replication to the written statement controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to possession of the shop in dispute? OPP.
2. Whether the plaintiff is entitled to recover Rs.11,220/- on account of rent of the shop from 1.9.1987 to 30.6.1990 as given in the plaint? OPP.
3. Whether the suit is not maintainable in the present form? OPD.
4. Relief

An additional issue was also framed vide order dated 26.4.1993, which is as under:

1A Whether the plaintiffs have terminated the tenancy rights of defendants qua the suit property as alleged? OPP.

The parties were afforded adequate opportunities to lead evidence.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 3 in favour of the defendant and against the plaintiffs, issue No.1A in favour of the plaintiff, issue No.2 in favour of the defendant and against the plaintiffs. Resultantly, vide judgment and decree dated 21.2.1997, the suit of

the plaintiffs was dismissed by the trial Court.

Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal before District Judge, Narnaul, which was assigned to Additional District Judge, Narnaul, who vide judgment and decree dated 30.7.1999 accepted the appeal partly and set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff passing a decree for possession by eviction of defendant from the shop in dispute directing the defendant to hand over the vacant possession of the shop to the plaintiffs without delay for the reason that his tenancy has been terminated, whereas relief with regard to payment of mesne profits was declined. The cross-objections of the defendant were also dismissed.

Being dissatisfied with the judgment and decree passed by Additional District Judge, Narnaul, the defendant has filed the present regular second appeal before this Court, notice of which was issued and the respondents-plaintiffs have appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The first and foremost question to be determined in this case is as to whether the shop in question is exempt from the provisions of the Act. The plaintiffs had led sufficient evidence to show that the premises had been let within 10 years of completion of

construction by them, as such provisions of the Act were not applicable. However, the trial Court had wrongly disbelieved such evidence adduced by the plaintiffs. Learned Additional District Judge, Narnaul had properly appreciated the evidence brought on file by the parties. Though the defendant in the written statement filed by him had denied having executed any rent deed dated 15.5.1981 but its execution stood duly proved on record. The rent deed bears signatures of defendant. The plaintiffs had examined scribe of that deed, who had categorically stated that he had scribed the said deed at the instance of defendant. PW2 Madan Lal had proved its execution and defendant having thumb marked the same. A perusal of the rent deed Ex.P1 makes it clear that rate of rent was fixed as Rs.330/- per month and the tenancy had started from that date. The defendant getting his statement recorded in the Court had admitted in his cross-examination that rent deed was executed and he had put his thumb impressions on it after admitting its correctness. The defendant had failed to lead any evidence that he was in possession of the shop prior to 15.5.1981. As per the case of the plaintiffs, they had raised construction over the site after getting it sanctioned from the Director Town and Country Planning, Haryana, Chandigarh on 1.1.1981. The construction was started and completed in the month of April, 1981. The document produced in that regard by the plaintiffs was wrongly disbelieved by the trial Court. However,

learned Additional District Judge, Narnaul rightly relied upon the same. Therefore, the provisions of the Act are certainly not applicable and tenancy could be terminated by service of notice under Section 106 of the Transfer of Property Act. The plaintiffs by leading oral as well as documentary evidence had established that notice had been served upon the defendant and after receipt of notice, the tenancy stood terminated and possession of the defendant became unauthorized.

Learned counsel for the respondents/plaintiff has argued that Section 106 of the Transfer of Property Act has not been specifically made applicable in the States of Punjab and Haryana and service of summons in the suit itself amounts to notice. He has referred to judgment Surinder Kumar @ Surjan Versus Mahant Gomati Dass, 2016(2) RCR(Rent) 369 wherein it was observed that Section 106 of the Transfer of Property Act is not applicable in the State of Punjab and service of summons itself amounts to notice and that suit cannot be dismissed on the ground of non-service of notice. In support of his such contention he has further referred to judgment Smt. Gurkanwal Virk Versus M/s Anand Sweets and Restaurant, 2016(2) RCR(Rent) 72.

The judgment and decree passed by First Appellate Court is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or

infirmity therein.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Narnaul.

No substantial question of law arises in this appeal.

The appeal stands dismissed accordingly.

24.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No