

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

RSA-4946-1999(O&M)

Date of decision:-23.9.2019

Smt.Vidya Wati

...Appellant

Versus

Sh.Bal Kishan Sehgal

...Respondent

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

Present: Mr.Ashok Gupta, Advocate
for the appellant.

Respondent ex-parte.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs –
Smt.Vidya Wati wife of Sh.Bhagwan Dass and Smt.Raj Rani wife of
Sh.Darshan Lal, both residents of 1084, Alugodam, Ambala Sadar,
Ambala Cantt. had brought a suit against Bal Krishan Sehgal of
Sehgal Provisional General Store, 1083-84, Alugodam, Ambala
Cantt. seeking possession by way of ejectment of the defendant from
one room/shop of the property bearing No.1083-84 depicted in red

colour in the site plan attached with the plaint besides craving for grant of mesne profit @ Rs.350/- per month from the date of institution of the suit till recovery of the possession.

As per the case of the plaintiffs, they are owners of the property in question, which was constructed and completed in the month of December, 1980 and was let out to the defendant at a monthly rent of Rs.200/-; the provisions of Haryana Urban (Control of Rent and Eviction) Act No.11 of 1973 are not attracted in the present case; the plaintiffs had terminated the tenancy of defendant by service of registered notice dated 7.8.1989, which was duly received by the defendant but despite that the defendant did not hand over the vacant possession of the property in dispute to the plaintiffs, giving rise to a cause of action to them to bring the suit in question.

On notice, the defendant appeared and filed written statement contesting the suit contending that the premises in question were covered by Rent Restriction Act, as such the suit was not maintainable. He denied that plaintiffs were owners of the property in question. On merits, he contended that the property in question was not situated in Ambala Cantt, rather was situated in Ambala Sadar, which was a separate Municipal Area; that the property in question was constructed earlier to December, 1989 and he has been in possession as tenant much prior to December, 1990 paying rent @ Rs.135/- per month, which was subsequently enhanced to Rs.150,

then to Rs.175 and thereafter to Rs.200/- per month. The defendant denied that the premises in question can fetch more than Rs.200/- per month as rent. He challenged the jurisdiction of the Civil Court to entertain and decide the suit. In the end, the defendant prayed for dismissal of the suit.

The plaintiffs had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint contending that they had purchased the property in question vide registered sale deed No.4217/1 dated 28.12.1997.

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

1. Whether the respondent is liable to be ejected on the ground of non-payment of rent? OPP.
2. Whether the Civil Court has no jurisdiction to try the present suit? OPD.
3. Relief.

Both the parties led evidence in respect of their claims.

During the course of their evidence, the plaintiffs examined Sh.Darshan Lal as PW1 and Sh.Baldev Raj, Building Inspector, Municipal Committee, Ambala Cantt. as PW2 besides tendering certain documents.

On the other hand, the defendant had got his statement recorded as DW2 and he also examined Sh.Vijay Kumar as DW1.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiffs and against the defendant. Resultantly, suit of the plaintiffs was decreed and the defendant was directed to hand over the vacant possession of the suit property to the plaintiffs within three months from the date of passing of judgment. The plaintiffs were also held entitled to mesne profits from the defendant for unauthorized use and occupation of the property in dispute at the rate of Rs.350/- per month from the date of filing of the suit till vacant possession is handed over by the defendants to the plaintiffs. This was so done vide judgment and decree dated 9.11.1998.

The defendant was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Ambala, which was assigned to Additional District Judge, Ambala, who vide judgment and decree dated 31.8.1999 accepted the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiffs.

Now it was turn of the plaintiffs to feel dissatisfied and plaintiff No.1 Vidya Wati had filed the present regular second appeal before this Court, notice of which was issued to the respondent, who was duly served but did not put in appearance.

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

A look at the judgment passed by the trial Court goes to show that it is quite detailed and well reasoned based upon proper appraisal and appreciation of evidence and correct interpretation of law. The trial Court relied upon the testimony of PW1 Darshan Lal son and special power of attorney of plaintiff No.1 and husband of plaintiff No.2, who had deposed that his wife Smt.Raj Rani had since expired and that the property in dispute was purchased in the year 1977; defendant Bal Krishan has been their tenant in a room on a monthly rent of Rs.200 and he has been in arrears of rent from 1.5.1989 till date, further deposing that the property in dispute and other buildings were constructed after getting the site plan sanctioned from Municipal Committee, Ambala Sadar, photocopy of the sanctioned site-plan being Ex.P2 and receipt regarding payment of charges to Municipal Committee Ex.P3. He further proved sanction letter Ex.P4, reply to the notice sent by defendant Ex.P8, envelope Ex.P9. He further stated that the property in question is exempt from Rent Act and shop of such type can fetch Rs.800/- to Rs.900/- per month. PW2 Baldev Raj, Building Inspector had proved the sanctioned site plan of property in dispute as Ex.P2. Whereas in rebuttal DW2 Bal Krishan, defendant had repeated on oath the version given in the written statement. DW1 Vijay Kumar, UGC, HSEB Ambala Cantt. had proved on record Ex.D2.

The discussion part is contained in paras No.12 and 13 of

the judgment, which for ready reference is reproduced as under:

“12. However, I do not agree with this argument of the ld. Counsel for the defendant, because a careful perusal of the site plan Ex.P2 shows that the sanction was granted on 22.9.80 from the Municipal Committee, Ambala Sadar, to the plaintiffs, available on record. Ex.D2 the certificate issued by the HSEB, Department showing the fact that the Electric connection was installed on 4.4.1980 in the name of the defendant in the proeprty in dispute is of no avail when the case file and the register relating to the account number of the electric connection of the defendant has not been produced which was not traceable as claimed. It is, however, surprised as to on what basis such type of certificate has been issued by the department, which is no help to the defendant in the absence of any further proof. The writing of '1979' on the building cannot be treated at all as a year of construction of the building in question, when the sanction to build up the building was given to the plaintiffs on 22.4.80. Therefore, looking to all these facts itself shows that the building was constructed after 24.4.1980, therefore, provisions of the Haryana Urban 'Control of Eviction Act' 11 of 1973 does not attract to

the present building.

13. Since, there is no receipt placed on record on behalf of the defendant to show that the rent of the premises in question was paid by him to the plaintiffs and later on the rent was deposited in the court on various dates as per the statements recorded during the pendency of the suit, therefore, the defendant whose tenancy has been terminated vide a legal and valid notice dated 7.8.89 is liable to be ejected from the property in dispute. Since, the defendant has been in unauthorized use and occupation of the property in dispute from the date of the service of notice, therefore, he is certainly liable to pay the mesne profits for the use and occupation of the property in dispute @ Rs.350/- p.m. till the possession is handed over to the plaintiffs by him.

The trial Court was justified in coming to the conclusion that the building was constructed after 24.4.1980 and provisions of Haryana Urban 'Control of Eviction Act' 11 of 1973 are not attracted to the building in question. While coming to this conclusion, the trial Court has taken into view the fact that the sanction of the site plan was granted by Municipal Committee, Ambala Sadar on 22.9.1980 and construction was raised subsequently, whereas the evidence adduced by the defendant with regard to release of electricity

connection on 4.4.1980 was not believable in absence of production of the case file and register relating to the account number of the electric connection of defendant and further the tenancy stood validly terminated vide legal and valid notice dated 7.8.1989 duly received by defendant to which he had sent reply and after termination of tenancy, the possession of defendant is unauthorized and he is liable to pay the mesne profits @ Rs.350/- per month.

I do not find any illegality and infirmity in the judgment and decree passed by the trial Court. However, learned Additional District Judge, Ambala by wrong analysis of the factual and legal position observed that Rent Restriction Act was applicable since the meson, who had raised the construction or the labourer helping him in the construction work had not been examined and bills regarding purchase of bricks and cement etc. had not been placed on file. When the plaintiffs had brought sufficient cogent and convincing evidence on record to show that the construction of the building had been completed within 10 years of the premises having been let out, non-examination of any meson/labourer and non production of bills with regard to purchase of construction material cannot be taken to adversely affect the case of the plaintiffs. The observations and conclusion reached by Additional District Judge, Ambala cannot be taken to be result of application of a judicious mind, rather it seems that he unnecessarily tried to find faults with the case of the

plaintiffs. Therefore, the judgment and decree passed by Additional District Judge, Ambala setting aside the judgment and decree passed by the trial Court are not sustainable.

The judgment passed by the trial Court is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law and it was wrongly upset by learned Additional District Judge, Ambala. That wrong is being undone by acceptance of the present appeal.

Resultantly the judgment and decree passed by Additional District Judge, Ambala are set aside and the judgment and decree passed by the trial Court decreeing the suit of plaintiffs are restored.

The appeal stands allowed accordingly with costs.

23.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No