

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1)

RSA No.4639 of 2011(O&M)
Date of Order: 17.05.2022

Arunesh Aggarwal

..Appellant

Versus

Shri Behari Lal Charitable Trust and another

..Respondents

(2)

RSA No.5483 of 2014(O&M)

Arunesh Aggarwal

..Appellant

Versus

Shri Behari Lal Charitable Trust and another

..Respondents

(3)

RSA No.6032 of 2016(O&M)

Arunesh Aggarwal

..Appellant

Versus

Shri Behari Lal Charitable Trust and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.R.Bansal, Advocate and
Mr. Ramesh Bansal, Advocate, for the appellant.
Mr. Sanjay Jain, Advocate, for respondent no.1

ANIL KSHETARPAL, J(Oral)

These three connected appeals filed by the defendants shall stand dispose of.

Three different suits filed by the respondent-Charitable Trust for recovery of arrears of rent, with respect to the following periods i.e. 08.05.1997 to 08.05.2000, 11.03.2000 to 10.03.2003 and 11.03.2003 to 10.07.2007, against the appellant and others have been decreed. The plaintiff-trust has been held entitled to the amount of Rs.98502/-, Rs.99046.50/- and Rs.63374/- respectively.

In the previous litigation, the alleged lease deed executed on 11.03.1982 has been held to be a rent note.

The only argument of the learned counsel representing the appellant(tenant) is to the effect that the lease deed dated 11.03.1982 which has been declared to be a lease deed is not admissible in evidence because it is not duly registered even though it has been executed for a period of 15 years. He submits that the aforesaid lease deed can only be seen by the Court for collateral purpose, namely, to determine the inter-se relationship between the parties. He further submits that the term of yearly increase of rent @ 10%, on the previous rent cannot be enforced. He relies upon Section 17 of the Registration Act, 1908, which provides that an agreement for lease of immovable property for any term exceeding one year is required to be compulsorily registered.

Per contra, the learned counsel representing respondent no.1 contends that the lease deed is executed on month to month basis and since it is provided that in case of default, the tenancy shall stand terminated, therefore, the term of contract for yearly escalation is enforceable.

The learned counsel representing the respondents submits that the plaintiff has claimed arrears from the year 1997 to 2007 which is beyond the term of contract i.e. 15 years. He submits that the appellant cannot be directed to pay only agreed rent.

On a court question, the learned counsel representing respondent no.1 admits that the plaintiff has not led any evidence to prove either the market rent or charges for use and occupation of the premises. The property was leased out for commercial purpose. Hence, it will be covered by the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973. A tenant holding over the possession after the term of tenancy has expired is protected under the aforesaid Act.

On a careful reading of the contract dated 11.03.1982, it is evident that a vacant plot was leased out by the Trust in favour of the appellants and their predecessors-in-interest on a monthly lease money of Rs.300/- with effect from 11.03.1982. Clause (a), (b), (d) and (j) are extracted as under:-

- (a) The licensee shall pay Rs.300/- (Rs. Three Hundred only) per month as licence fees with effect from 11.03.1982 to the first party through its incharge. Licensee shall pay the licence fee every month regularly in advance.*
- (b) That after the expiry of every year of the licence, the licensee shall make an increase of ten percent on the licence fee i.e. at the expiry of the first year the licence fee will be Rs.330/- per month, and at the expiry of the second year it will be Rs.363/- per month and so on so forth in subsequent years.*
- (d) That the licenece is for a minimum period of two years and in case the licensee wants to vacate the said land before the expiry of 2 years then he will have to pay the licence fees for the remaining unexpired period of two years.*
- (j) That this licence is for a period of 15 years but shall be liable to be terminated in case of breach of any of the above covenants.”*

It is evident from the reading of Clause (d) and (j), together, that the minimum period of lease was two years, whereas, the agreed term of the lease was for 15 years. In such circumstances, the argument of the learned

counsel that the lease deed is executed on month to month basis and is, therefore, not required to be compulsorily registered, does not find favour of this Court. Section 17 of the Registration Act, 1908, is extracted as under:-

17. Documents of which registration is compulsory.—

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force,

namely:—

(a) instruments of gift of immovable property;

(b) other non -testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

1[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]

Provided that the 2[State Government] may, by order published in the 3[Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

4(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of

1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001(48 of 2001)and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A].

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition deed; or
(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v)5[any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject -matter of the suit or proceeding]; or

(vii) any grant of immovable property by 7[Government]; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or 8[(xa) any order made under the Charitable Endowments Act, 1890(6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

9[Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.”

On reading of Clause (d), it is evident that the lease of immovable property from year to year or, for any term exceeding one year, or reversing a yearly rent, is required to be compulsorily registered. This lease deed is not a lease of immovable property from year to year. However, it is with respect to a term exceeding one year. Such lease deed, in the considered opinion of the Court, is required to be compulsorily registered. Hence, the lease deed is not admissible in evidence. It can only be considered for collateral purposes in view of Section 49 of the Registration Act, 1908.

In view thereof, the agreement between the parties with regard to providing of periodical increase cannot be enforced.

It has been brought to the notice of the Court that the appellant is no more in possession of the land which was leased to the appellant as it has already been acquired by the State of Haryana, for which litigation is pending in this Court. Accordingly, the decrees passed by the Courts below are modified. The appellant shall be liable to pay rent @ Rs.300/- per month for the period which has already been noticed in the earlier part of the order.

With these modifications, all the three appeals stand disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

May 17, 2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No