

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2825-2016(O&M)

Date of Order:22.08.2022

Reserved on:09.08.2022

Pawan Kumar

...Appellant

Versus

Ram Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Goyal, Advocate
for the appellant.

Mr. Sumeet Goel, Sr. Advocate with
Mr. Samir Rathaur, Advocate
for the respondent.

ANIL KSHETARPAL, J

While questioning the correctness of the concurrent findings of fact arrived at by the Courts below, the defendant has come up in the present appeal.

This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the judgments as well as the records of the courts below which was requisitioned.

The learned counsel representing the appellant contends that there is no forfeiture of the tenancy rights merely because the appellant denied the relationship because as per the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the 1973 Act'), the grounds of eviction of a tenant are specifically provided which does not include the forfeiture of tenancy on the denial of landlord

and tenant relationship, therefore, the judgments passed by the courts below are not sustainable. He relies upon judgment in **Devasahayam (dead) by LRs vs. P. Savithramma and others, (2005) 7 SCC 653.** While elaborating, he submits that previously the respondent (plaintiff in the suit) himself filed a petition under section 13 of the 1973 Act, alleging that the appellant is a tenant. He submits that in view of the admission of the respondent, the civil court has no jurisdiction to pass a decree for possession.

On the other hand, the learned counsel representing the respondent relies upon the judgment passed in **M/s Khosla Ice and General Mills vs. Padmawati (dead) through LRs and others 2016 (10) R.C.R(Civil), 810,** to contend that once the appellant denied the relationship of landlord and tenant while claiming that he has acquired ownership by the prescription of time (adverse possession) by setting up a hostile title against the respondent, then the Rent Controller has no power to decide the same. He submits that the appellant cannot be permitted to approbate and reprobate in the same breath.

This court has considered the submissions of the learned counsels representing the parties and have considered, evaluated and analyzed the facts of the case.

On 30.08.2010, at the first instance, the respondent filed a petition under Section 13 of the 1973 Act, seeking eviction of the appellant herein, from the house in question. While contesting the rent petition, the appellant took a positive and categoric stand that the Rent Controller has no jurisdiction to entertain and decide the petition as there is no relationship of landlord and tenant between the parties. The appellant claimed that he has become the owner in possession of the property by way of adverse

possession. Para 1 of the preliminary objections of the reply filed by the appellant reads as under:-

“1. That this Hon'ble Court (Rent Controller) has got no jurisdiction to entertain and try this petition because there is no relation of landlord and tenant between the parties to the petition. The respondent never took the premises from the petitioner on rent or otherwise the respondent is in actual physical possession of the premises in question continuously without any interruption, peacefully, hostile and without payment of rent etc. to any one including the petitioner since 1.4.1995. Thus the respondent has become owner in possession by way of adverse possession. Thus, this Hon'ble Court has got no jurisdiction to entertain the present petition.”

Pursuant to the aforesaid statement, the learned counsel representing the respondent herein withdrew the rent petition while seeking permission to file a civil suit. In the presence of learned counsel representing the appellant, the Rent Controller passed the following order on 08.02.2011, on the basis of the statement of the counsel representing the respondent herein which reads as under:-

*“Present: Sh. Anand Gupta, Adv. for petitioner.
Sh. P.P.Kaushik, Adv. for the respondent.*

Today, the case was fixed for assessment of rent and filing of replication. However, learned counsel for the petitioner made a statement that the respondent has denied the tenancy and hence he does not want to pursue the present petition and wants to withdraw the same reserving his right to file a fresh suit for possession. Statement of the learned counsel for the petitioner recorded separately in this regard. Keeping in view the statement of the learned counsel for the petitioner, present petition is hereby dismissed as withdrawn with a liberty to file fresh suit, if required. File be consigned to the record room after due compliance.”

Thereafter, the respondent herein filed the present suit disclosing that he filed a previous ejectment petition under the 1973 Act but

in view of the stand taken by the appellant, he withdrew the petition with permission to file the civil suit. The respondent prayed for the passing of a decree of possession as he is the owner of the property and the appellant is just a trespasser.

While defending the suit, the appellant filed the written statement claiming that he is in possession of the property from 1995 and he raised the construction of the residential house including its boundary wall in the year 1995. It was contended that his possession is continuous, peaceful and without any interruption and without the payment of rent etc. and therefore, he has become the owner by way of adverse possession. It may be noted here that the appellant never questioned either the jurisdiction of the civil court nor claimed tenancy while seeking protection under the 1973 Act.

The trial court, on appreciation of pleadings, framed the following issues:-

- “1. *Whether the plaintiff is owner of house bearing MCK No.218/17?OPP*
2. *Whether the defendant has become owner of the property on the ground of adverse possession?OPP*
3. *Relief.”*

The suit was decreed. The first appeal preferred by the appellant was also dismissed on re-appreciation of evidence.

It is evident that the respondent herein (the plaintiff) in this suit have never claimed that the appellant is a tenant in possession of the suit property. The appellant has also not asserted that he being a tenant is entitled to protection under the 1973 Act. Secondly, from the pleading of the parties, the aforesaid issue never arose. Thirdly, before the courts below, the appellant never objected to the maintainability of the suit on the ground

that only eviction petition under the 1973 Act was maintainable. In second appeal, for the first time, the learned counsel representing the appellant is trying to set up a new case for the appellant. In the facts of the present case, this court does not find it appropriate to permit the appellant to take this objection particularly when on 08.02.2011, the respondent withdrew the rent petition in view of the stand taken by the appellant. He did not object, when the Rent Controller granted permission to file the suit. Furthermore, the conduct of the appellant is condemnable. He does not deserve any indulgence from the court. Once he acquiesces to the jurisdiction of the civil court which otherwise also has the plenary jurisdiction, now the appellant cannot be permitted to take a U turn.

The judgment relied upon by the learned counsel representing the appellant in *Devasahayam (dead) by Lrs (supra)* is interpreting the provisions of A.B.Buildings (lease, rent and eviction) Control Act, 1960. Section 10(2) (vi) of the aforesaid act enables the Rent Controller to order eviction of the tenant even if the tenants denies the title of the landlord or claims a right of the permanent tenancy. Hence, the aforesaid judgment is not applicable to the present case.

The learned counsel representing the appellant did not press any other argument.

Keeping in view the aforesaid discussion, finding no merit, the Regular Second Appeal is dismissed.

22nd August, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO