

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 306 of 2022 (O&M)

Date of Decision: 02.09.2023

Madan Lal and Another

... Appellant(s)

Versus

Subhash Chand Sharma and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vijay Lath, Advocate
for the appellant(s).

Anil Kshetarpal, J.

CM-629-C-2022

1. For the reasons stated in the application, the same is allowed and delay of 170 days in re-filing the appeal is condoned.

RSA-306-2022

2. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

3. The correctness of the concurrent findings of facts, arrived at by both the Courts below, is assailed in this second appeal filed by the defendants. The plaintiffs' suit for the grant of decree of possession by way of the ejectment against the appellants has been decreed by both the Courts

below. There is no dispute to the effect that the plaintiffs are the owners of

the property, whereas the defendants were inducted as the tenants. They were permitted to make a temporary construction and reside there. The property in dispute is situated in the abadi of the village, hence, the tenants have no protection under the East Punjab Urban Rent Restriction Act, 1949 and the Punjab Rent Act, 1995. After the service of the notice under Section 106 of the Transfer of Property Act, 1882 (hereinafter referred to as “the 1882 Act”), the suit was filed. While filing the suit, the defendants claim that they are the permanent tenants since the year 1949 @ ₹11/- per month. The trial Court, on appreciation of the evidence, found that there is no evidence of permanent tenancy in favour of the defendants and after the service of notice under Section 106 of the 1882, the tenancy has eventually come to an end. Thus, the suit was decreed, which, in appeal, was affirmed by the First Appellate Court on re-appreciation of the evidence.

4. Heard the learned counsel representing the appellant at length and with their able assistance, perused the paper-book.

5. The learned counsel representing the appellant contends that once the tenants have been permitted to construct a building, the presumption is that, the parties are intended to create the permanent tenancy. He, in support of his arguments, relies upon the judgment of the Supreme Court in *Sivayogeswara Cotton Press, Devangere and Others v. M. Panchaksharappa and Another AIR 1962 Supreme Court 413*. He further contends that the First Appellate Court has failed to analyze the arguments with regard to the permanent tenancy.

6. This Court has considered the submissions. The learned counsel representing the appellant admits that there is no written document creating

permanent tenancy in favour of the defendants. It also remains undisputed that the defendants were paying the monthly rent and they have also produced certain receipts which are evident to show the payment of rent. It is also evident that they were permitted to construct certain temporary structures. In such circumstances, it would not be appropriate to hold that the owner had intended to create a perpetual tenancy. The judgment passed by the Supreme Court in *Sivayogeswara Cotton Press, Devangere's case(supra)* is not applicable because in that case, the registered lease deed 26.10.1914 was entered into between the parties which provides that the lessee can continue in possession of the tenanted premises as long as he may desire to do so. In that context, the Supreme Court held that there was a perpetual tenancy in favour of the lessee. However, in this case, neither there is any written contract between the parties nor there are any other entries which may lead this Court to hold that it was a case of permanent tenancy.

7. Undoubtedly, the First Appellate Court has failed to examine the contention of the defendants with regard to the permanent tenancy, however, it has examined the remaining arguments by writing a detailed judgment. A small inadvertent mistake which does not go to the root of the matter should not result in setting aside the detailed judgment particularly when this Court has permitted the learned counsel representing the appellant to address the arguments at length with regard to permanent tenancy and the same has been evaluated, analyzed and adjudicated.

8. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts

Regular Second Appeal No. 306 of 2022 (O&M)**4**

below. Hence, the present appeal is dismissed. The miscellaneous application(s) pending, if any, shall stand disposed of.

9. However, taking into consideration that the appellants are residing in a small plot of five marlas, they are granted six months time to handover the vacant possession to the owner provided they continue to pay the monthly rent, in advance.

(Anil Kshetarpal)
Judge

September 02, 2023**“DK”**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No