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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-309-1992 (O&M)
Reserved on : 05.03.2024
Pronounced on :06.03.2024

Dr. Joginder Pal JainAppellant

Versus

Dr. Ravinder Kumar SharmaRespondent

CORAM: HON’BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Saksham Mahajan, Advocate
for the appellant.

Mr. M.L. Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate
for the respondent.

PANKAJ JAIN, J.

Defendant is in appeal. For convenience, the parties are being referred to by their original position in the suit i.e. the appellant as defendant and the respondent as plaintiff.

2. Plaintiff filed a suit for possession of shop situated at Rishi Dayanand Road, Ludhiana (*hereinafter referred to as ‘the shop’*) along with recovery of Rs.14,400/- on account of compensation for use and occupation of the shop for the period commencing from 01.01.1980 to 31.12.1982 @ Rs.400/- per month. As per the plaintiff, his mother Shrimati Manohar Wati

who was original owner of the shop allowed defendant to use portion of the shop in dispute for carrying on his profession as a consultant medical practitioner as a licensee at license fee of Rs.100/- per month. After the shop was gifted by Shrimati Manohar Wati to plaintiff on 29.12.1975, defendant approached plaintiff to continue as licensee. Plaintiff agreed to the request made by defendant. License Agreement was executed in favour of defendant w.e.f. 01.01.1976 at license fee of Rs.100/- per month. License Deed was renewed from time to time. In September, 1978, it is claimed that defendant was allowed to use entire shop for a period of 5 years on the condition that he shall pay license fee of Rs.100/- per month upto 31.12.1979 and thereafter @ Rs.400/- per month. It is claimed that defendant failed to discharge his obligation of paying the license fee w.e.f. 01.01.1980. He being in breach of conditions of the agreement, license stands revoked and he is liable to deliver back the possession of the shop to the plaintiff.

2.1. Plaintiff served legal notice upon the defendant on 28.06.1982 through his counsel. Defendant denied ownership of the plaintiff in his reply to the legal notice dated 4/6.8.1982. Defendant even denied execution of License Deed dated 16.09.1978 in favour of the plaintiff and claimed that his status in the shop was not of a licensee but of a tenant.

2.2. Based on the rival pleadings, following issues were framed:-

1. Whether the plaintiff is entitled to recover Rs.14400/- on account of compensation for use and occupation of the shop? OPP

2. Whether Manohar Wati executed gift deed dated 29.12.75 in favour of the plaintiff regarding the property in dispute? OPP
3. Whether the civil court has no jurisdiction to try this suit? OPD
4. Whether the agreement dated 1.1.76 was executed? OPP
5. Relief.

2.3. The parties to the suit adduced oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

2.4. On appraisal of evidence vis-à-vis pleadings, the Trial Court dismissed the suit holding that defendant is in exclusive possession of the shop and that he continued to be in possession even after expiry of the license deed which was for 5 years. Thus, all ingredients of Section 105 of the Transfer of Property Act, 1882 (*hereinafter referred to as '1882 Act'*) being satisfied, it is a case wherein tenancy has been given colour of license in order to defeat the provisions of East Punjab Urban Rent Restriction Act, 1949 (*hereinafter referred to as '1949 Act'*).

2.5. Thus, while returning finding in favour of defendant that he was in possession of the shop as tenant and not as a licensee, the Trial Court partly decided Issue No.1 in favour of defendant. Claim of plaintiff with respect to recovery was decided in favour of the plaintiff. Issues No.2 & 4 were also decided in favour of plaintiff i.e. gift deed dated 29.12.1975 in favour of plaintiff was held valid and agreement dated 01.01.1976 was also held to be validly executed.

2.6. In view of aforesaid findings, the suit of the plaintiff was partly decreed only with respect to recovery of Rs.3600/- as arrears of rent w.e.f. 01.01.1980 to 31.12.1982. The suit for possession was dismissed holding that defendant was not licensee but a tenant who can be evicted under the rent laws only.

2.7. Aggrieved, plaintiff preferred first appeal, which stands allowed by Additional District Judge, Ludhiana reversing the findings on the document Ex.P9 holding that defendant was in possession of the shop as a licensee and not as lessee.

3. Counsel appearing for appellant/defendant while assailing the impugned judgment and decree has taken this Court through the document in question and has tried to impress upon that the Appellate Court erred in law in holding the same to be a license deed despite the fact that the same satisfies all the ingredients of lease as enumerated under Section 105 of 1882 Act. He has further submitted that the Lower Appellate Court instead of discussing the evidence led in the present case, erroneously relied upon evidence of other cases which is a procedure totally foreign to the jurisprudence.

4. It is settled proposition of law that right of a party cannot be defeated on the basis of evidence led in a 'lis' to which he was not a party and thus had no opportunity to rebut. In support of his arguments, he has relied upon following judgments:-

- a) ***Malook Singh and others vs. State of Punjab and others, 2021 SCC OnLine SC 876;***

- b) *Dr. Shah Faesal and others vs. Union of India and another, (2020) 4 SCC;*
- c) *Associated Hotels of India Ltd. vs. R.N. Kapoor, AIR 1959 SC 1262;*
- d) *C.M. Beena and another vs. P.N. Ramachandra Rao, (2004) 3 Supreme Court Cases 595;*
- e) *Smt. Daya Wati vs. Dr. Ravinder Kumar Sharma, passed in RSA No.1623 of 1988, decided on 26.03.1991;*
- f) *Vikrambhai Bhagabhai Patel etc. vs. Dy. General Manager, ONGC Ltd. and another, 2017 SCC OnLine SC 1830.*

5. *Per contra*, learned Senior Counsel appearing for respondent/plaintiff has submitted that the Appellate Court has rightly held the document in dispute to be license deed as it was executed as a license deed only. He has further submitted that from the perusal thereof it is evident that the defendant, who is an educated person, signed the same admitting it to be a license deed. He has further submitted that in the same locality there are other shops which were licensed out by the plaintiff and his family by way of similar documents. A *lis* between the parties to one of the said license deeds travelled upto the Apex Court. The document was held to be license deed only. He has further submitted that in order to gather intention of the parties, one of the tests prescribed is to look into the contemporaneous documents and thus the Lower Appellate Court did nothing wrong in relying upon the findings recorded by this Court as well as the Apex Court to interpret a document contemporaneous to those involved in the other suits.

6. I have heard counsel for the parties and have gone through records of the case carefully.

7. At the outset, counsel for the appellant has submitted that though execution of license deed Ex.P9 was initially denied by the defendant in the written statement, however, he does not wish to dispute the said document.

8. Facts are not much in dispute. The issue primarily is whether defendant is in possession of the shop in dispute as a licensee or is in possession as a lessee. Thus fate of this appeal hinges on answer to the question:- whether document Ex.P9 is a license agreement or is a lease deed?

9. In order to infer as to whether the document is lease or license, tests are prescribed in various precedents. In the case of ***Associated Hotels of India Ltd. vs. R.N. Kapoor, AIR 1959 SC 1262*** the Apex Court laid down the following proposition:-

“At one time it was thought that the test of exclusive possession was infallible and if a person was given exclusive possession of a premises, it would conclusively establish that he was a lessee. But there was a change and the recent trend of judicial opinion is reflected in Errington v. Errington wherein Lord Denning reviewing the case-law on the subject summarizes the result of his discussion thus at p. 155:

‘The result of all these cases is that, although a person who is let into exclusive possession is, prima facie, to be considered to be tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy.’

The Court of Appeal again in Cobb v. Lane considered the legal position and laid down that the intention of the

parties was the real test for ascertaining the character of a document. At p. 1201, Somervell, L.J., stated:

‘... the solution that would seem to have been found is, as one would expect, that it must depend on the intention of the parties.’

Denning, L.J., said much to the same effect at p. 1202:

‘The question in all these cases is one of intention: Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land?’ ”

And then the Apex Court held as under:-

“(1) to ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form;

(2) the real test is the intention of the parties — whether they intended to create a lease or a licence;

(3) if the document creates an interest in the property, it is a lease; but if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and

(4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.”

10. This quadra test evolved further in the case of ***Rajbir Kaur vs. S. Chokesiri and Co., (1989) 1 SCC 19*** wherein the Apex Court held that:-

“It is essential to the creation of a tenancy that the tenant be granted the right to the enjoyment of the property and that, further, the grant be for consideration. While the definition of ‘lease’ in Section 105 of the Transfer of Property Act, 1882, envisages the transfer of a right to enjoy the property, on the

other hand the definition of a 'licence' under Section 52 of the Indian Easements Act, 1882, consistently with the above, excludes from its pale any transaction which otherwise, amounts to an 'easement' or involves a transfer of an interest in the property, which is usually involved in the case of a transfer of right to enjoy it. These two rights, viz., easements and lease in their very nature, are appurtenant to the property. On the other hand, the grant only for the right to use the premises without being entitled to the exclusive possession thereof operates merely as a licence. But the converse implications of this proposition need not necessarily and always be true. Wherever there is exclusive possession, the idea of a licence is not necessarily ruled out. English law contemplates what are called 'Possessory Licences' which confer a right of exclusive possession, marking them off from the more usual type of licences which serve to authorise acts which would otherwise be trespasses. Thus exclusive possession itself is not decisive in favour of a lease and against a mere licence, for, even the grant of exclusive possession might turn out to be only a licence and not a lease where the grantor himself has no power to grant the lease. In the last analysis the question whether a transaction is a lease or a licence 'turns on the operative intention of the parties' and that there is no single, simple litmus test to distinguish one from the other. The 'solution that would seem to have been found is, as one would expect, that it must depend on the intention of the parties.'"

11. Still further the Supreme Court in the case of ***Delta International Ltd. vs. Shyam Sundar Ganeriwalla and another, (1999) 4 Supreme Court Cases 545*** held as under:-

"16.....From the aforesaid discussion what emerges is:

- (1) To find out whether the document creates a lease or a licence the real test is to find out “the intention of the parties”; keeping in mind that in cases where exclusive possession is given, the line between a lease and a licence is very thin.*
- (2) The intention of the parties is to be gathered from the document itself. Mainly, the intention is to be gathered from the meaning and the words used in the document except where it is alleged and proved that the document is a camouflage. If the terms of the document evidencing the agreement between the parties are not clear, the surrounding circumstances and the conduct of the parties have also to be borne in mind for ascertaining the real relationship between the parties.*
- (3) In the absence of a written document and when somebody is in exclusive possession with no special evidence how he got in, the intention is to be gathered from the other evidence which may be available on record, and in such cases exclusive possession of the property would be the most relevant circumstance to arrive at the conclusion that the intention of the parties was to create a lease.*
- (4) If the dispute arises between the very parties to the written instrument, the intention is to be gathered from the document read as a whole. But in cases where the landlord alleges that the tenant has sub-let the premises and where the tenant in support of his own defence sets up the plea of a mere licensee and relies upon a deed entered into, inter se, between himself and the alleged licensee, the landlord who is not a party to the deed is not bound by what emanates from the construction of the deed; the tenant and the sub-tenant may jointly set up the*

plea of a licence against the landlord which is a camouflage; in such cases, the mask is to be removed or the veil is to be lifted and the true intention behind a facade of a self-serving conveniently drafted instrument is to be gathered from all the relevant circumstances. Same would be the position where the owner of the premises and the person in need of the premises executes a deed labelling it as a licence deed to avoid the operation of rent legislation.

(5) Prima facie, in the absence of a sufficient title or interest to carve out or to create a similar tenancy by the sitting tenant in favour of a third person, the person in possession to whom the possession is handed over cannot claim that the sub-tenancy was created in his favour; because a person having no right cannot confer any title of tenancy or sub-tenancy. A tenant protected under statutory provisions with regard to occupation of the premises having no right to sub-let or transfer the premises, cannot confer any better title. But, this question is not required to be finally determined in this matter.

(6) Further lease or licence is a matter of contract between the parties. Section 107 of the Transfer of Property Act, 1882 inter alia provides that leases of immovable property may be made either by a registered instrument or by an oral agreement accompanied by delivery of possession; if it is a registered instrument, it shall be executed by both the lessee and the lessor. This contract between the parties is to be interpreted or construed on the well-laid principles for construction of contractual terms, viz., for the purpose of construction of contracts, the intention of the parties is the meaning of the words they have used and there can be no intention independent of that meaning; when the terms of the contract

are vague or having double intendment, one which is lawful should be preferred; and the construction may be put on the instrument perfectly consistent with his doing only what he had a right to do.”

12. In order to determine the said issue, it will be apt to peruse the document in question i.e. Ex.P9, the contents of which is being reproduced herein below:-

“THIS DEED OF LICENCEE MADE THIS DAY 16th Sept. 1978 between Shri Ravinder Kumar Sharma son of Shri Amrit Lal Sharma, resident of B-XIX-732 Patel Nagar, Civil Lines, Ludhiana, himself (hereinafter called the Licensor) party of the Ist part and Dr. Joginder Pal Jain son of Sh. Roshan Lal Jain of Ludhiana (hereinafter called the Licensee) party of the second part.

Whereas the Licencee has been using the portion of shop No.1 out of property No.B-XIX-732, Civil Lines, Ludhiana owned by the Licensor as a Licencee and the said Licence has expired and not he Licensee has approached the Licencor to allow him to use the entire portion of shop No.1, out of the said property for a period of 5 years on the terms and conditions mentioned hereinafter.

NOW THIS DEED WITNESSTH AS UNDER:-

- 1. The Licensee shall pay a Licence fee of Rs.100/- per moth to the Licensor as a License fee upto 31st Dec. 1979 and thereafter he shall pay Rs.400/- p.m. as Licence fee for the remaining period of Licence .(Rs. Four Hundred Only w.e.f. 1.1.1980).*
- 2. That Licence fee shall be paid by 7th day of every month in months the Licenceshallst and revoked automatically and the*

Licensor will have the right to stop the Licence to use the property without serving any notice to the Licensee.

- 3. That in addition to Licence fee, the Licensee shall also pay electricity charges for the electricity consumed by him and shall keep the licensor indemnified against all such payments.*
- 4. That the Licensee shall use the said property for carrying out the profession of medical practitioner and will not indulge into any other business activity in the said shop i.e. only prescription writing as a consultant.*
- 5. That the licensee shall use the said property for his personal use and shall not allow any other person or persons to make use of the same in any capacity whatsoever.*
- 6. That the licensee will keep the licensed premises in good repairs and deliver the possession thereof in its present condition to the licensor after termination of the licence or revocation of the licence as the case may be.*
- 7. That no right in the property licensed shall pass to the licensee. The possession of the premises shall always be deemed to be that of the licensor is in possession of portion shown in with this deed. The licensee shall have only right to use the premises for the said purpose only.*
- 8. That the parties hereof have agreed expressly that it is no intention of the parties to create a relationship of landlord and tenant between them and the licensee hereby agrees that he shall not claim any tenancy rights or such benefits under this deed.*
- 9. That the licensor shall always be at liberty to cancel the licence by giving one month's notice to the licensee in case of breach of terms of the licence and the notice left at the licensee's address shall be deemed to be sufficient service of the notice upon him and after the service of the notice of*

revocation. The Licensor shall be fully entitled to enter upon the property peaceably.

10. That the licensor may at any time during the continuance of the licence enter upon the property for raising further construction on the property licensed and the licensee shall not obstruct in such further construction.

11. That the licensee shall not in any manner whatsoever, part with the possession of the licenced premises, wholly or partly to any other person.

12. That the breach of any term herein mentioned, shall entitle the licensor to revoke the licence and enter upon the licensed premises.

13. That the licensee hereby agrees that consequent upon the termination or revocation of the licence, as the case may be, immediately handover vacant and peaceful possession of the premises to the licensor without any obstruction.

14. That the licensee hereby further agrees to indemnify the Licensor and keep them harmless from all claims, demands, damages action, costs and charges to which the licensor may become subject or which he may have to pay or held liable, therefore by reason to any injury to person's reputation or property suffered or sustained by any agent or employee of the Licensor or arising out of any activity or negligence or omission of the licence or its agents and servants while in or about the premises of the licensor.

IN WITNESS WHEREIF THE PARTIES hereto have here unto set their respective hands this day and the year stated above."

13. A bare perusal whereof reveals that the same has been executed as a license deed. Parties have signed the same in their capacity as licensor and licensee. But trite it is that nomenclature of the document does not determine the nature thereof. Rather it is the intention of the parties that has

to be gathered. In order to infer the intention of the parties, the document has to be read in its entirety. The following facts emerge from reading of the same:-

- a) That the embargo was put on the user of the property. It was specifically provided that the licensee shall use the property only for carrying out profession of medical practitioner i.e. only prescription writing as consultant.
- b) It is stipulated that the licensee shall not allow any other person or persons to make use of the property and shall use the same only for his personal use.
- c) That the licensee was put to the condition that he shall deliver the possession of the shop to the licensor after the termination of the license or revocation thereof, as the case may be.
- d) That it was also specifically provided that no right in the property shall pass to the licensee and the possession of the premises shall always be deemed to be that of licensor. The licensee shall only have right to use the premises for the purpose prescribed.
- e) Last but not the least, it was specifically agreed that there is no intention of the parties to create relationship of landlord and tenant between them and the licensee shall not claim any tenancy rights.

14. While looking at the document and the facts of the present case in the light of the aforesaid binding precedents, this Court finds that the

present appeal deserves to be dismissed on more than one count. Trial Court held that the deed was executed is a camouflage to evade the rigors of the statutory tenancy. A careful reading of the written statement filed by defendant would reveal that there is no such plea raised. Though he claims his status as that of a tenant but at no place it was pleaded that the real intention of the parties was that of creating a lease deed and the document was given the colour of license only to circumvent the provisions of 1949 Act. Defendant is an educated person capable of understanding his rights. Trial Court had no reason to make out a case in favour of defendant which was not even pleaded. Intention of the parties is reflected in the words used by them in the deed and no intention could be inferred beyond the said words. Reliance can be placed upon following observations made by Supreme Court in Delta International Ltd.'s case (supra):-

“.....21. Thirdly, no contention was raised by the defendants to the effect that the licence deed is a camouflage to circumvent the provisions of law or to defeat the rights of the owner or the tenant who granted the licence and inducted the licensee in possession. Further, in cases where a contract for licence is executed by handing over exclusive possession of the premises, the distinguishing line between the lease and the licence is absolutely thin. In such cases, the terms of the document are to be read as they are and it would be unreasonable to draw an inference that the parties intended to create a relationship of landlord and tenant despite express contrary terms in the deed which are binding between the parties.....”

15. The principle that the Court is required to infer the intention of the parties while interpreting the documents is couched by rule of caution

that is, the Courts while interpreting documents can neither add nor subtract any word to the documents and that the Court is required to construct a document by interpretation only in case of there being any ambiguity in import of covenants contained therein. Ex.P9 has been described as license deed. It is the defendant who asserts his status as a lessee against his status of licensee as per agreement. Onus lays heavily upon him to prove that the document was indeed intended to be lease deed but was intentionally dubbed as a license agreement with an intent to circumvent provisions of 1949 Act. In the absence of any plea, the Court can not substitute the words to make out a case in favour of defendant. Instead of discharging his onus the defendant denied execution of the document itself. His complete denial has not helped his cause in any manner. Once he denies execution of the document, he cannot be allowed to turn around and aver that the same was intended to be lease and not license.

16. Another reason for dismissing the present appeal emanates from the fact that a similar document executed by the landlord in the present case in favour of another tenant in the same locality travelled upto the Apex Court in the case titled as ***Om Parkash vs. Dr. Ravinder Kumar Sharma, 1995 Supp(4) Supreme Court Cases 115***, wherein the Apex Court held as under:-

“1. The short question which arises for consideration in this appeal is whether the following transactions covered by Exhibits P-4, 3, 2, 8, 7, 6 and 5 dated 1-5-1969, 9-9-1974, 1-11-1975, 1-1-1976, 1-4-1977, 22-3-1978 and 16-4-1979 respectively amount to licence or lease. We may refer to Associated Hotels of India Ltd. v. R.N. Kapoor [AIR 1959 SC 1262 : ILR 1959 Punj 1897]

wherein the distinction between lease and licence has been set out.

The following tests are applied to distinguish between the two:-

(1) to ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form;

(2) the real test is the intention of the parties whether they intended to create a lease or a licence;

(3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and

(4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances which negative the intention to create a lease.”

2. The same principle has been adopted in Capt. B.V. D'Souza v. Antonio Fausto Fernandes. On these tests, we will try to find out whether these transactions would amount to lease or licence:

(1) Nomenclature is not conclusive though it may be one of the guiding factors.

(2) The intention of the parties will have to be ascertained notwithstanding the various terms of the deed. However, that does not mean that the terms of the deed are to be ignored altogether. In this particular case, we want to focus attention on clause (10) of the deed which reads as under:

“The licensee shall not have any right or interest in the shop No. 2 except as licensee in accordance with the terms and conditions of this agreement. The possession of the shop shall vest with the licensor and the licensor shall have the right to enter at any time to inspect the same.”

3. We may also add that similar clause occurs in each of the documents referred to above. Therefore, as per this clause the licensee does not have any interest in the immovable property

which is a distinctive badge of a lease. That has to be given due weight and credit.

4. In this case, the evidence discloses two important factors: (1) the licensee taking the key in the morning from the licensor and returning in the evening and (2) the existence of goods of the plaintiff and his mother in a portion of the shop in dispute. These two clearly will go to establish that the appellant-licensee was not in exclusive possession which test is emphasised in Capt. B.V. D'Souza case. Besides the above, the appellant-licensee has been executing periodical deeds as seen from the above. Consequently, we hold that the High Court is right in its conclusion that what was granted in favour of the appellant was only a licence and not a lease.....”

17. Clause 10 interpreted by Apex Court is almost similar to Clause 7 & Clause 10 in Ex.P9 when read conjointly.
18. In view of above, this Court finds no reason to interfere in the well reasoned judgment passed by the Lower Appellate Court.
19. Resultantly, the present appeal is dismissed without any costs.
20. Before parting with the judgment, I must place on record my appreciation for young counsel appearing for the defendant/appellant. He was thorough in his preparation and was prompt in responding to the queries raised by the Bench.
21. Pending application(s), if any, shall also stand disposed off.

(PANKAJ JAIN)

JUDGE

March 06, 2024

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