



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1979-2006 (O&M)
Reserved on: -20.11.2024
Pronounced on:- 09.12.2024

KRISHAN LAL
Vs.
KAMLESH GUPTA (DECEASED THROUGH LRS)

... APPELLANT
... RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By:- Mr. Ashok Gupta, Advocate, and
Mr. Eklavya Gupta, Advocate, for the appellant.
Mr. Ashish Gupta, Advocate, for the respondent.

DEEPAK GUPTA, J.

Suit for mandatory injunction regarding suit property filed by plaintiff Smt. Kamlesh Gupta (*respondent herein*) was dismissed by the trial Court on 24.12.2004. However, the appeal filed by her was accepted by the first appellate court of learned Additional District Judge vide judgment dated 04.04.2006 and consequently, the suit was decreed. It is against this reversal that defendant of the case Krishan Lal (*appellant herein*) has approached this Court.

2. Dispute is regarding premises No.6267/2-3 situated at Sadar Bazar, Ambala Cantt. as shown in the site plan attached with the plaint, measuring 5' 3"x 26' (*referred to as suit premises*), on which plaintiff claims the defendant to be a licensee; whereas defendant claims that he is a tenant over it.

3.1 Facts of the case, in brief, are that Sanjeev Kumar, Sandeep Kumar and Naveen Kumar @ Nischint Kumar sons of Parshotam Dass, were owners of property bearing No.6267/2 measuring 26' x 19' along with the demised premises 5' 3"x 26' bearing house tax No.6267/2-3 situated in Sadar

Bazar, Ambala Cantt. Plaintiff purchased the entire property from Sanjeev Kumar etc. vide registered sale deed dated 09.09.1996 for valuable consideration. Out of the aforesaid property purchased by the plaintiff, her husband Gian Chand was in possession of the property bearing No.6267/2 as tenant @ ₹200/- per month. On the other hand, the demised premises forming part of the entire property, was in occupation of the defendant as a licensee. The defendant, who earlier used to sell fruits on the *chabutra* of the building of the Punjab National Bank and later on, on the *chabutra* of the building of the State Bank of Bikaner and Jaipur, was allowed to use the demised premises by Parshotam Dass, the father of the previous owners as licensee. As plaintiff wanted the demised premises for her own use and occupation, therefore, she revoked the license of the defendant by issuing a notice dated 14.10.1996 through her counsel, which was duly served upon him. Defendant did not vacate the premises and as such, compelled the plaintiff to file the suit seeking mandatory injunction.

3.2 The stand of the defendant in the written statement is that he is not a licensee on the suit property; rather, he is a tenant thereon @ ₹200/- per month since 1984 and the said rent was later on enhanced to ₹250/- per month in the year 1995 and that he has been regularly paying the rent to Parshotam Dass i.e. father of the previous owners of the premises. He further denied that plaintiff had purchased the demised premises. However, it was admitted that husband of the plaintiff was tenant in the property No.6267/2 forming part of the entire property.

3.3 Necessary issues were framed. Evidence produced by both the parties was taken on record. As noted earlier, the trial Court dismissed the suit by holding that defendant was the tenant on the suit property and that the suit was not maintainable, as the petition should have been filed under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 [for short the Act'] for seeking ejectment as per law. However, the appeal filed by the plaintiff has been accepted by the First Appellate Court by holding the defendant to be the licensee on the suit property.

4. Assailing the aforesaid findings of the First Appellate Court, it is contended by Id. counsel for the appellant-defendant that appellant was inducted as a tenant by Parshotam Dass, the father of the previous owners, who was acting as their guardian. Id. counsel contends that defendant had produced on file receipts Ex.R7 to R12 issued by said Parshotam Dass, who even appeared in the witness box as DW1, and proved those receipts to have been issued by him and in these circumstances, the appellate Court has fallen in error in holding the appellant as a licensee. Id. counsel contends that the finding of the first Appellate Court to hold the receipts to be forged documents is also against record. Prayer is accordingly made to accept the appeal by setting aside the judgment of the First Appellate Court and to restore the judgment of the trial Court, whereby the suit had been dismissed.

5. Refuting the aforesaid contentions, Id. counsel for the respondent-plaintiff has drawn attention towards the findings of the First Appellate Court, which reveal that Parshotam Dass, the father of the previous owners, was himself an attesting witness to the sale deed dated 9.9.1996 (Ex.P1) in favour of the plaintiff and in the said sale deed, there is a clear recital to the effect that defendant was a licensee on the demised premises. Id. counsel further points out that all the receipts Exs.R7 to R12 are proved on record to have been issued on the same date by the same ball pen and have been found to be forged documents as per the expert evidence. Even the First Appellate Court has made its own observations in holding these receipts to be forged documents and that there is no material to disturb the said finding of fact, as recorded by the First Appellate Court, which is the final Court on facts. With these submissions, he prayed for dismissal of the appeal.

6. I have considered submissions of both the sides and have perused the record thoroughly and carefully with the assistance provided by counsels for both the sides.

7. As per sale deed dated 09.09.1996 (Ex.P1), plaintiff-Smt. Kamlesh purchased the suit property from previous owners Sanjeev Kumar, Sandeep Kumar and Naveen Kumar @ Nischint Kumar. The property as

purchased by her not only includes the demised premises presently under the occupation of the defendant, but also the premises forming part of property No.6267/2 measuring 26 ft. x 19 ft., on which Sh. Gian Chand, the husband of the plaintiff was earlier a tenant. Said sale deed is duly signed by Kanshi Ram Lambardar and Purushotam Dass, the father of the vendors, as attesting witnesses. It is purported to be drafted by Darshan Kumar Jindal-document Writer.

8. Plaintiff examined not only the document writer-Darshan Kumar Jindal as PW1, but also one of the attesting witnesses Kanshi Ram as PW3, both of whom duly proved the due execution of the sale deed Ex.P1 in favour of the plaintiff. Sh. Gian Chand, husband/power of attorney holder of the plaintiff appearing as PW4 also proved the said sale deed. In order to controvert the evidence of the plaintiff, defendant examined Sh. Parshotam Dass, the father of the previous vendors as DW1 and who is also one of the attesting witness to the sale deed (Ex.P1), who stated that defendant was the tenant on the demised premises. However, said Parshotam Dass in his cross-examination admitted that his sons have already sold the suit property to the plaintiff vide sale deed Ex.P1. He has not denied his signature on the said sale deed (Ex.P1). It is thus clear that DW1-Parshotam Das, who has been examined by defendant himself as his own witness, has admitted the sale deed in favour of the plaintiff vide Ex.P1 and as per Ex.P1, the defendant was a licensee on the suit property.

9. Assuming for the sake of arguments, that contents of Ex.P1-Sale deed are not binding on the rights of the plaintiff, considering the fact that said defendant was not a party to the said transaction, despite that there is adequate evidence to show that defendant was a licensee on the suit property and not a tenant. In order to prove that he was a tenant on the suit property, defendant relies upon receipts Exs.R7 to R12 purportedly issued by Parshotam Dass in his favour regarding the suit property. The details of the said receipts are as under: -

Exhibit	Date	Duration	Rent per month (in ₹)	Total (in ₹)
Ex.R7	05.01.1984	Jan to Dec 1984	200/-	2400/-
Ex.R8	05.01.1986	Jan to Dec 1986	200/-	2400/-
Ex.R9	05.01.1987	Jan to Dec 1987	200/-	2400/-
Ex.R12	05.01.1988	Jan to Dec 1988	200/-	2400/-
Ex.R10	05.01.1993	Jan 1993 to Dec 1994	200/-	4800/-
Ex.R11	05.01.1995	Jan to Dec 1995	250/-	3000/-

10. Bare perusal of the aforesaid details of the receipts Exs.R7 to R12 would reveal that all of these have been issued on the same date i.e. 5th January in different years i.e. during 1984 to 1995. Although, Parshotam Dass, examined as DW1 deposed that these receipts had been issued by him, but these are proved to be fabricated documents. Plaintiff has examined Sh. Mani Jain, handwriting and document expert as PW in his rebuttal evidence, who by virtue of his report proved that all these receipts to have been prepared by the same ball pen on the same date. No evidence in rebuttal to this expert evidence has been led on the part of defendant.

11. It is also pertinent to mention that none of these receipts Ex.R7 to R12 contain any particular receipt number. This is quite contrary to the various receipts Ex.P7 to P53, which are also issued by Parshotam Dass in favour of Gian Chand, who was a tenant on another portion of the entire property, of which the demised premises forms part. All those receipts Exs.P7 to P53 issued in different months carry different receipt numbers. Besides, the First Appellate Court has rightly observed that even on bare perusal of Exs.R7 to E.12, all these appear to have been fabricated by Parshotam Dass in collusion with the defendant so as to help him and so as to show him as a tenant on the suit property, despite the fact that said defendant has been clearly referred as a licensee in the sale deed Ex.P1 by virtue of which, the sons of Parshotam Dass had sold the suit property to the plaintiff and on which sale deed, Parshotam Dass himself is an attesting witness.

12. In view of the aforesaid facts and circumstances, this Court does not find any fault in the well reasoned judgment of learned Appellate Court, whereby defendant-appellant has been held to be licensee on the suit property. It has been rightly held that receipts Exs.R7 to R12, relied by the defendant-appellant, are forged the fabricated documents, having been prepared in collusion with Parshotam Dass.

13. This Court does not find any reason to differ with the findings of facts as returned by the appellate court, based on proper appreciation of evidence on record and so, holding the appeal to be devoid of any merits dismissed the same.

09.12.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No