



In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2187 of 2023 (O&M)

Date of Decision: 25.11.2024

Veena

... Appellant(s)

Versus

Balbir Singh alias Kuku Gud and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Ms. Monita Mehta, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. 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*.

2. The plaintiff assails the correctness of the findings of fact arrived at by both the Courts below while dismissing her suit filed under Section 38 of the Specific Relief Act, 1963 (hereinafter referred to as “the 1963 Act”) and permanent injunction restraining the defendants from interfering in her peaceful and lawful possession and forcibly dispossessing her from House bearing MC No. 616, located in the area of Mohalla Gugga Sain, Nakodar.

3. The plaintiff has filed a suit claiming that her husband late Lekh Raj was inducted as a tenant by defendant No.3's grand father 40 years ago.

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After the death of her husband, the plaintiff has been regularly paying rent, however, no receipt has been issued.

4. With the passage of time, the condition of the tenanted premises became dilapidated and hence, the plaintiff requested defendant No.2 to carry out the necessary repairs. The roof of the house in dispute has also fallen due to which the plaintiff was forced to shift to another accommodation but her household articles were lying in the house in dispute.

5. The defendants contested the suit alleging that the plaintiff is neither a tenant nor in possession of the suit property and thus, the defendants No.1 and 2 are actually in possession of the property being caretakers on behalf of the defendant No.3, who is the owner of the property in dispute. The plaintiff and her family had already shifted to their own triple storeyed property in the year 2015 after relinquishing their tenancy rights over the suit property.

6. After the issues were culled out, the parties were permitted to lead their respective evidence. Both the Courts below, while relying upon the deposition the plaintiff, PW.2 Raj Kumar (her son-in-law) and PW.4 Rajesh Kumar, held that the plaintiff has admitted that she is residing in the house located at Guru Teg Bahadur Nagar for the last three/four years and the defendants were in possession of the property well before filing of the suit.

7. The aforesaid findings of fact have been affirmed in appeal by the First Appellate Court.

8. Heard the learned counsel representing the appellant at length

and with her able assistance, perused the paper-book.

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9. The learned counsel representing the appellant contends that the condition of the tenanted premises became dilapidated, therefore, the appellant along with her family shifted to the house located in Guru Teg Bahadur Nagar, however, her household articles were still lying in the premises in dispute. She submits that there is no evidence of relinquishment of tenancy rights as alleged by the defendants.

10. This Court has considered the submissions. As per the plaintiff's case, the roof of the tenanted premises had fallen. She claimed that she requested the defendant No.2 for necessary repairs, however, he refused to do the needful. Hence, she was forced to shift to another accommodation. The plaintiff has failed to prove that her household articles were lying or she was in any way in effective possession of the suit property. The plaintiff as well as her two witnesses including her son-in-law had categorically admitted that the defendants were in possession of the suit property well before filing of the suit.

11. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of fact arrived at by both the Courts below. Hence, the present appeal is dismissed.

12. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

November 25, 2024**"DK"**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No