

RSA-2192-2023 (O&M) - 1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

121 RSA-2192-2023 (O&M)
Date of Decision: 29.01.2024.

Sukhchain Singh ...Appellant.
Versus
Sailwinder Kaur and anotherRespondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Arshit Goel, Advocate (Legal Aid Counsel)
for the appellant.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/
plaintiff against the concurrent findings recorded by both the Courts below,
vide which the suit of the plaintiff was dismissed.

2. Brief facts of the case as per plaint are that one Kishore Kumar
son of Om Parkash was owner of the demised premises and about 25-26
years back, he let out the premises to the plaintiff at the rate of Rs.400/- per
month. The plaintiff has been paying the said rent and he is doing the cycle
tyre/ tube repair/ puncture shop in the said premises and has been running
his business under the name and style of Suchchain Tyre Works, Grain
Market, Bathinda. Defendant No.1 alleged that she had purchased the shop
in question from its original owner and had been demanding the rent of the
shop in question. The plaintiff had paid the rent upto the month of January,
2016, but in good faith, no receipt was ever obtained from defendant No.1.

There is relationship of landlord and tenant between the plaintiff and

RSA-2192-2023 (O&M)

- 2-

defendant No.1. Though plaintiff has already paid the rent upto January, 2016, but inspite of that, defendant No.1 is threatening to dispossess him from the said shop and is also threatening to disconnect the electricity connection of the shop, in connivance with defendant No.2. Defendant No.1 by exercising her influence and in connivance with defendant No.2 had also managed to get the electricity connection, installed in the shop in question, disconnected on 08.04.2016.

3. The suit of plaintiff was dismissed by the trial Court, vide judgment and decree dated 30.08.2022 and counter claim filed by defendant No.1 for possession of the said shop was decreed. The appeal preferred by the plaintiff before the First Appellate Court was dismissed, vide judgment and decree dated 10.04.2023. Hence, the present Regular Second Appeal.

4. Learned counsel for the appellant has contended that the both the Courts below have not appreciated the evidence led by the plaintiff in its right perspective and have not considered the oral evidence led by the plaintiff/ appellant and have also not considered the documentary evidence in the shape of documents Ex.P1 to Ex.P9. He has contended that the evidence led by the plaintiff is sufficient to prove that he was inducted as a tenant in the suit premises, about 25-30 years back by the then landlord Kishore Kumar and the said shop was let out to the appellant at a monthly rent of Rs.400/- per month. A concocted story has been put up to deny the relationship of landlord and tenant between respondent No.1 and appellant. He has argued that no cogent evidence has been led to show that respondent No.1 had been dispossessed by the appellant in August, 2015, which plea

RSA-2192-2023 (O&M)

- 3-

has been set up by respondent No.1 in the counter claim filed by her. She has also not properly proved the sale deed in her favour and no attesting witness had been examined. He has further contended that respondent No.1 by filing a counter claim in suit of the appellant wants to dispossess the appellant illegally by bypassing the procedure prescribed under the East Punjab Urban Rent Restriction Act, 1949. He has urged that the plaintiff is in legal possession over the shop in dispute being a tenant since more than last 25-30 years. He has also produced the electricity bills on record to corroborate the fact that the appellant had been regularly paying his electricity bills and is in possession of the shop in dispute.

5. I have heard learned counsel for the appellant and gone through the records thoroughly.

6. In the instant case, defendant No.1/ counter-claimant has denied relationship of tenant and landlord between the plaintiff and defendant No.1, so it was for plaintiff to prove that there exists relationship of tenant and landlord between him and defendant No.1. Though plaintiff himself has appeared as his own witness as PW1 and has also examined PW2-Puran Singh. But mere testimonies of plaintiff and PW2-Puran Singh are not sufficient to prove the relationship of tenant and landlord between the plaintiff and defendant No.1 and his being a tenant over the suit property. No official from the Municipal Corporation has been examined in order to prove factum of tenancy of the plaintiff over the suit property. No such official record has been produced to that effect. It is the specific pleading of the plaintiff in the plaint, which he has reiterated while

RSA-2192-2023 (O&M)

- 4-

appearing as PW1, that he was inducted as a tenant in the suit premises by one Kishore Kumar son of Om Parkash, but in the written statement which was filed by him to the counter claim, the plaintiff claims the name of the landlord as Ashok Kumar. It is not only in the pleadings of the case set up by the plaintiff, but it is also there in the evidence led by him. As such, the plaintiff is not specific about the name of the landlord who allegedly inducted him as a tenant in the shop in dispute which was required to be proved by the plaintiff. No rent note has been brought on record. In the oral evidence also, neither Kishore Kumar nor Ashok Kumar have been examined by the plaintiff to prove his induction as a tenant. The plaintiff claimed Mark A to be receipts of landlord given by him from time to time but no evidence has been led by the plaintiff to prove the due execution of these documents which have been collectively marked as document Mark A. Nothing has been proved on record that by whom these documents were written and in whose presence the same were recorded. No evidence to identify the handwriting or the signatures etc. has been led, even in his testimony he is totally silent about these documents.

7. It is not in dispute that on the date of filing of the suit, the plaintiff was in possession over the shop in dispute, as counter claim for issuing decree of possession has been filed by defendant No.1. The document Ex.P8 is to the effect that defendant No.1 after purchase of the property in dispute, moved an application for disconnecting the electricity connection which was installed in the premises but this document cannot establish the factum of tenancy in any manner. The electricity bills Ex.P1 to

RSA-2192-2023 (O&M) - 5-

Ex.P7 and Ex.P9 just prove that the plaintiff had been paying electricity charges but from these documents, it cannot be held that the possession of the plaintiff was that of a tenant.

8. Sufficient evidence had been produced by counter claimant/defendant No.1 to prove that she is owner of the suit property by virtue of a registered sale deed No.2359 dated 02.07.2015 Ex.DW1/1. The previous sale deeds of previous owners have also been proved on file as Ex.DW1/2 and Ex.DW1/3. During his cross-examination, PW1 plaintiff has also admitted the ownership of defendant No.1 by virtue of sale deed Ex.DW1/1. So in this eventuality, the non-examination of the attesting witness of the sale deed will not adversely effect the case of defendant No.1. The plaintiff has failed to prove that in which capacity he is occupying the suit property which is owned by defendant No.1 and he is not entitled for decree of permanent injunction against the true owner i.e. defendant No.1, when his tenancy is not proved.

9. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

10. Appeal stands dismissed.

11. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

29.01.2024.
komal

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No