



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5940-2019(O&M)

Date of Decision: September 10, 2024

Dr.Rajesh Jale

...Petitioner

Versus

Dr.Anita Narula and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.R.Kartikeya, Advocate for
Mr.Sahil Khunger, Advocate
for the petitioner.

Mr.Abhishek Sethi, Advocate
for the respondents.

ARCHANA PURI, J.

The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India, to seek setting aside of the order dated 30.05.2019 passed by learned trial Court, thereby, dismissing the application under Order 7 Rule 11(d) CPC.

The facts germane, to be noticed, as culled out from the paperbook are as follows:-

That, an ejectment petition under Section 13 of the Haryana Urban Control of Rent and Eviction Act, 1973 was filed by present respondents- Dr.Anita Narula and Dr.Apoorv Narula, thereby, seeking ejectment of the

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present petitioner, from the second floor of the demised premises, which they asserted to have been leased out on monthly rent of Rs.1,50,000/-, on the basis of the lease deed dated 15.11.2013. It was claimed therein that the tenancy started w.e.f. 01.09.2013, for a period of five years i.e. upto 31.08.2018. On the basis of the recitals of the said lease deed, the rent fixed by agreement was stated to be Rs.2,56,217 per month. On the count of 'arrears of rent' and requirement of the premises for the 'personal need', the ejectment was sought.

In the written statement, preliminary objections were raised by the respondent (present petitioner), wherein, he disputed the maintainability of the rent petition, in the present form and also asserted that there existed no relationship of tenant and landlord, between the parties. In fact, he pleaded that he was inducted as licensee in the disputed property on 01.09.2013, vide licence deed No.8384 dated 26.11.2013, though it was written as lease deed. The fact of tenancy, as such, was denied and the relationship of licensor and licensee was asserted, between the parties.

During the pendency of the aforesaid petition, an application under Order 7 Rule 11 (d) CPC for rejection of the plaint/petition was filed, wherein, again it was reiterated that the petitioner (respondent therein) was inducted as licensee in the disputed property, on the basis of the licence deed dated 26.11.2013, though written as lease deed. It was asserted that licence period was w.e.f. 01.09.2013 to 31.08.2018, which had expired. On the basis of the same, it was asserted that the licensee cannot be termed as tenant and therefore, it was asserted that ejectment petition, as such, is not



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maintainable.

Reply to the aforesaid application was filed, wherein, the present respondents asserted about there to be relationship of landlord and tenant, between the parties.

After hearing learned counsel for the parties, vide impugned order, learned trial Court dismissed the aforesaid application.

Feeling aggrieved, the petitioner has filed the present revision petition.

In pursuance of the notice issued, the respondents made appearance through counsel.

Learned counsel for the parties heard.

As already observed aforesaid, there is dispute between the parties, with regard to the nature of the relationship existing between the parties to the lis. The rent petition was filed, thereby, asserting about there to be relationship of landlord and tenant, between the parties, but however, the present petitioner asserted that he was inducted as licensee, on the property in dispute, for a period of five years, which has since expired. Also, it is categorical claim that the deed bearing Vasika No.8384 dated 26.11.2013, makes it clear that it is licence deed and mere fact that on two places, lease deed is written, cannot be made basis to conclude that it is a lease deed. Once there exist relationship of licensor and licensee, between the parties, therefore, the petition filed under Section 13 of the Haryana Urban Control of Rent and Eviction Act, 1973, is not maintainable. In fact, it is asserted that the respondents were required to file a suit for possession.



In the light of the dispute between the parties, relating to existence of the relationship between the two, as that of licensor-licensee or that of landlord-tenant, essential to note is the document, which was executed between the parties on 26.11.2013, copy whereof is Annexure P-1.

It is pertinent to mention that on the first page, in the head note, it has been mentioned as Lease Deed, whereas, in the subsequent body of the document, there is mention of licensee and licensor, repeatedly, in various clauses of the said document. On the headnote, also there is a receipt mentioned, wherein, it is stated as 'Rent Deed'. Throughout, much emphasis has been laid upon clause 11 of the document, on the basis whereof, it is submitted that there is categoric recital in the said document, which states that as per this agreement, a licensee is given a mere license to use the licensed premises and the same does not create any right or tenancy of lease or any other right, whatsoever, in favour of the licensee. Even, in the deed, there is mention made about the possession, having handed over to the petitioner.

However, the respondents have also brought on record, two cheques, wherein, on the backside of the cheques, there is recital mentioned about payment of rent for the specific period.

This Court is intentionally keeping a restraint from making reference to various clauses of the alleged document executed between the parties. Beneficial reference is made to *Smt.Rajbir Kaur vs. M/s S.Chokesiri and Co., 1988 AIR (Supreme Court) 1845*, wherein, the Hon'ble Supreme Court, threadbare discussed the law, qua the lease deed



and licence deed. Therein, it was observed by the Hon'ble Apex Court that the realities and substance of the transaction and not merely the deed, becomes the basis for the determination of the legal nature of the relationship. The deed is a mere piece of evidence. In deciding, whether a grant amounts to a lease or only a licence, regard must be had more to the substance than the form of the transaction. It is determined by the law and not by the label, the parties choose to put on it. Furthermore, it was observed that to give exclusive possession, there need not be express words to that effect; it is sufficient if the nature of the acts, done by the grantee shown that he has and was intended to have the right of exclusive possession. The fact that the agreement contains a clause that no tenancy is to be created will not, of itself, preclude the instrument from creating a lease.

Now, adverting to the case in hand, whether the document in question is lease deed or licence deed, the same can only be adjudicated, on the basis of the evidence, adduced in the case. On the basis of the recitals of this document, as well the cheques, brought on record, it is difficult to ascertain, definitely, as to whether the document relates to a lease or licence. In the given circumstances, learned trial Court, as such, has rightly concluded that the questionable nature of the document, can only be ascertained, after the evidence is brought on record.

In the given circumstances, the question with regard to the nature of the relationship, can only be ascertained, when the evidence, is brought on record. Specific issue, with regard to the nature of relationship,



be framed by learned trial Court and the opportunity be granted to the parties, to lead evidence, relating to the same.

Thus, in the light of the aforesaid discussion, when the question about the nature of the document, can be ascertained, after the receipt of the evidence, therefore, the order of dismissal of the application by learned trial Court, warrants no interference.

Hence, the revision petition sans merit and is hereby dismissed.

September 10, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No