
(2011) 08 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2783 of 2011 (O and M)

Ashok Kumar Vaid and another

APPELLANT

Vs

Mohinder Kumar Goel

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2011) 164 PLR 729 : (2012) 1 RCR(Civil) 961

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—The epitome of the facts, culminating in the commencement, relevant for disposal of the present appeal and emanating from the record is, that Late Mohan Lal Goel, was the owner and in possession of the house bearing No.254, Sector 9, Panchkula. He executed a lease deed and let out the same to Ashok Kumar Vaid and Mrs.Neeru Vaid-appellant-defendants(hereinafter to be referred as "the defendants") on monthly rent of Rs. 1400/-. The said lease was stated to be for a period of 11 months and it was stipulated that if the lease is extended beyond 11 months, then the rent is to be enhanced @ 10% per annum. After the death of Mohan Lal Goel, Mohinder Kumar Goel-respondent-plaintiff (for brevity "the plaintiff") and his brother Ashok Kumar Goel inherited and became the owner of the demised premises.

2. As the defendants failed to pay the agreed rent, therefore, the plaintiff filed a petition for eviction of the defendants, on the ground of nonpayment of rent. The petition was allowed, ejectment order was passed and the Rent Controller directed the defendants to pay a sum of Rs.35,928/- vide order dated 05.09.2006. The appeal filed by the defendants against the ejectment order passed by the Rent Controller, was also dismissed by the Appellate Authority by way of order dated 28.03.2007. However, the appeal filed by the plaintiff for modification was allowed and ultimately, the Appellate Authority directed the

defendants to pay the total outstanding amount of Rs.1,45,861/-. The revision petition filed by the defendants was also dismissed by this Court by means of order dated 27.04.2007.

3. As the defendants did not pay the amount of arrears of rent, despite the ejectment order, therefore, the plaintiff filed the suit for recovery. The case set-up by the plaintiff, in brief, insofar as relevant was, that although the defendants remained unsuccessful upto the High Court, but they did not comply with the original order of the Rent Controller. They did not vacate and remained in possession of the demised premises upto 25.06.2007, without payment of any rent and water charges. Thus, the defendants were stated to be liable to pay a sum of Rs.1,61,804/- along with interest w.e.f. November 1999 to June 2007. The plaintiff requested the defendants to pay the amount, but in vain, which necessitated him to file the present suit for recovery against the defendants. On the basis of aforesaid allegations, the plaintiff filed the suit for recovery of arrears of rent, interest and cost etc. to the extent of Rs.1,61,804/- against the defendants, in the manner described hereinabove.

4. The defendants resisted the suit and filed the written statement, taking certain preliminary objections of, maintainability of the suit, misjoinder and non-joinder of the necessary parties, limitation, cause of action and locus standi of the plaintiff. The defendants have denied the ownership of the plaintiff over the suit land and the liability to pay the indicated amount. It will not be out of place to mention here that the defendants have stoutly denied all other allegations contained in the plaint and prayed for dismissal of the suit.

5. Controverting the allegations contained in the written statement and reiterating the pleadings of the plaint, the plaintiff filed the replication. In the wake of pleadings of the parties, the trial Court framed the essential issues for proper adjudication of the case.

6. The parties to the litigation in order to substantiate their respective pleas, brought on record oral as well as the documentary evidence.

7. After taking into consideration the entire evidence on record, the trial Court decreed the suit of the plaintiff with costs and passed the decree of Rs.1,61,804/- along with interest @ 6% per annum from the date of filing of the present suit till actual realization of the amount, by means of impugned judgment and decree dated 21.01.2010.

8. Aggrieved by the impugned decision of the trial Court, the defendants filed the appeal, which was dismissed as well by the first Appellate Court, by virtue of impugned judgment and decree dated 04.12.2010.

9. The appellant-defendants still did not feel satisfied with the impugned judgments and decrees of the Courts below and preferred the present regular second appeal.

10. After hearing the learned counsel for the appellant-defendants, going

through the record with his valuable assistance and after considering the entire matter deeply, to my mind, there is no merit in the instant appeal in this respect.

11. Ex facie, the argument of the learned counsel that the earlier order/judgment of the Rent Controller will not be binding on the civil court as regards the remaining due amount in question is concerned and will not operate any *res judicata*, lacks merit.

12. As is evident from the record that the father of the plaintiff executed the lease deed and the defendants remained as tenants in possession of the suit property from 01.04.1995 to 25.06.2007. The plaintiff obtained the possession of the defendants in pursuance of ejectment order of the Rent Controller.

13. Having completed all the codal formalities, the Rent Controller has rightly determined the relationship of landlord and tenant between the parties and concluded that the tenants neither paid, nor tendered the arrears of rent in question. Once, it is proved that the defendants remained in possession of the suit property as a tenant upto 25.06.2007. In that eventuality, they were liable to pay an amount of Rs. 1,61,804/- as its rent, interest and cost. Therefore, the contrary argument of the learned counsel for the appellant-defendants "*stricto sensu*" deserves to be and is hereby repelled under the present set of circumstances.

14. Thus, it would be seen that the trial Court after taking into consideration the ejectment order of the Rent Controller and other material on record, has rightly decreed the suit of the plaintiff. Not only that, the impugned decision of the trial Court was upheld by the first Appellate Court, by way of impugned judgment and decree dated 04.12.2010, which in substance is, as under:-

In view of the above discussion, since the Rent Controller has already determined the relationship between the parties as well as rate of rent, there was no requirement on the part of the respondent to again agitate the same before the civil court. The suit for recovery of the respondent was merely to execute the decree of the appellate court. Since the eviction petition was filed by the respondent in the year 2001, hence, he could very well claim the arrears of rent for the period 1999 to 2000 in the said petition. Now when the arrears had been granted to the respondent by the Rent Controller, the appellate authority, it could not be said that since the said amount which the respondent was entitled to recover constituted of arrears, more than three years prior to the institution of the suit for recovery, it was barred by time. The limitation in the suit for recovery was to be seen that it was within three years from the time the cause of action had accrued. In this case, cause of action has accrued in favour of the respondent from 27.04.2007, i.e. When the litigation between the parties attained finality or at the most on 28.03.2007 when the appellate authority held the appellants to be in arrears amounting to Rs.1,45,861/-.

In addition to the above mentioned arrears which the respondent are entitled to vide judgment dated 28.3.2007 and 27.4.2007, the respondent is also entitled to

arrears of rent for the month of March, April, May and upto 24.6.2007 amounting to Rs.14,810/-. As regards the claim of the respondent for water charges from 1.9.2006 to 30.6.2007 i.e. 1/3rd of the actual water charges, for this the respondent was required to prove the water bills and only thereafter 1/3 amount could have been arrived at by the court. Thus, in my view, the learned trial court has rightly arrived at the finding that the suit of the respondent was not barred by limitation. The amount which the respondent is entitled to recover from the appellant as held by the trial court is modified to the effect that the said amount comes to Rs. 1,45,861/- plus 14,810/-, the total of which is 1,60,671/-. The suit for recovery of arrears of rent could have been instituted by any of the co-owner-land lord. Any other finding arrived at by the learned trial court does not warrant any interference.

15. Learned counsel for the appellants did not point out any material, much less cogent, to contend that how and in what manner, any interference is warranted in the impugned judgments and decrees of the Courts below.

16. No other meaningful argument has been raised by the learned counsel for the appellant-defendants, to assail the findings of the Courts below. All the remaining contentions, relatable to the appreciation of evidence, now sought to be urged on their behalf, have already been duly considered and dealt with by the Courts below, in this relevant behalf.

17. Moreover, having scanned the admissible evidence in relation to the pleadings of the parties, the Courts below have recorded the above indicated concurrent finding of facts. Such judgments, containing the valid reasons, cannot possibly be interfered with by this Court, while exercising the powers conferred u/s 100 CPC, unless and until, the same are illegal and perverse. No such patent illegality or legal infirmity has been pointed out by the learned counsel for the appellants, so as to take a contrary view, than that of the well-articulated decision arrived at by the Courts below, in this context.

18. Neither any question of law, much less substantial, is involved in this regular second appeal, nor any other legal point, worth consideration, has either been urged or pressed by the learned counsel for the appellants.

19. In the light of aforesaid reasons, as there is no merit, therefore, the instant appeal is hereby dismissed as such.