
(2010) 04 P&H CK 0327
In the Punjab And Haryana At Chandigarh

Balbir Singh

APPELLANT

Vs

Shri Krishan

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2010) 04 P&H CK 0327

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Grover, J.—This Regular Second Appeal is directed against judgments and decrees dated 11.4.2008 and 1.11.2008 passed respectively by the Civil Judge (Senior Division), Gurgaon (hereinafter described as "the trial Court") and the District Judge, Gurgaon (referred to hereinafter as "the first appellate Court").

2. The plaintiff-respondent had filed a suit for possession of House No. 1177, Sector 15-II, Gurgaon (hereinafter called as "the demised premises"). A decree for recovery of Rs. 64,000/- as rent with mesne profits along with interest at the rate of 18% per annum was also prayed for. Still further, a decree for recovery of Rs. 8000/- per month as rent was also sought. It was pleaded that the demised premises, which is owned by the plaintiff, was leased out to the defendant vide a lease agreement executed in the month of April, 2004 for a period of eleven months commencing from 1.4.2004 to 28.2.2005 and the monthly rent of Rs. 8000/- was agreed upon between the parties; that the lease was further extended up to 31.5.2005 by a fresh agreement dated 6.2.2005; that the defendant's possession over the demised premises after 1.6.2005 was unauthorised; and that although no notice u/s 106 of the Transfer of Property Act, 1882 (for short, "the 1882 Act") was required for vacating the demised premises, yet, notice dated 4.7.2005 was given to the defendant to do so, which was duly received by him.

3. Upon notice, the defendant appeared and filed his written statement contesting the suit. He, however, admitted the tenancy and the relationship of landlord and tenant between the plaintiff and him qua the demised premises, but denied the monthly rent of Rs. 8000/-. It was pleaded that the agreed monthly rent was Rs. 3000/-. The inception of the tenancy with effect from 1.4.2004 was also denied and it was pleaded that he was in occupation of the premises for the last many years and the plaintiff never issued any receipt regarding payment of rent. It was denied that the tenancy had ever been extended for three months by way of a separate agreement. It was pleaded that suit for permanent injunction was filed by the defendant seeking to restrain the plaintiff from dispossessing him, which was ultimately withdrawn as the plaintiff had made a statement that he would not dispossess the defendant forcibly.

4. On the pleadings of the parties, as many as nine issues were framed and after appraisal of the evidence before it, the trial Court decreed the suit of the plaintiff.

5. Feeling aggrieved, the defendant filed an appeal which was dismissed by the first appellate Court.

6. Hence, this Regular Second Appeal.

7. Learned Counsel for the defendant-appellant has questioned the findings recorded by the Courts below primarily on the ground that according to the agreement between the parties vide which the tenancy was created with effect from 1.4.2004 up to 28.2.2005, there was a stipulation that two months' notice would be required to be given by either of the parties in the event of the tenancy being terminated. He, thus, contended that by virtue of the notice which was given by the plaintiff only for fifteen days, the condition of the agreement stood violated and in these circumstances, the eviction of the defendant from the demised premises could not be ordered. To support his contentions, he placed reliance on a judgment of this Court rendered in R.S.A. No. 43 of 1993 - Ved Parkash and Ors. v. Rambilas Gupta and Ors, decided on 20.3.2009.

8. Further, learned Counsel for the appellant argued that admittedly, the tenancy was not covered under the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 and since the parties had, by way of mutual agreement, consented to a period of two months' notice in the event of termination of tenancy, the provisions of Section 106 of the 1882 Act would have no applicability to the facts of the instant case. He then submitted that because the plaintiff had served a notice of 15 days pursuant to the provisions of Section 106 of the 1882 Act, the same is defective and consequently, the defendant could not have been ordered to be evicted from the demised premises.

9. On the other hand, learned Counsel for the plaintiff contended that initial agreement was superseded by a subsequent agreement dated 6.2.2005 by which the period of tenancy was extended from 28.2.2005 to 31.5.2005 and thus, the subsequent agreement would hold the field. He further contended that since there was no stipulation of two months' notice in the subsequent agreement, the

findings of the Courts below are correct and the appeal deserves to be dismissed.

10. I have thoughtfully considered the rival contentions and have perused the impugned judgments.

11. There is, indeed, no doubt that the original lease agreement entered into between the parties stipulated two months' notice as a prerequisite for termination of the tenancy at the behest of either of the parties. Clause 11 of that agreement (Exhibit P2), a copy of which was placed before me during the course of hearing, is extracted below:

11. that if the lessor needs the said premises for his personal use and shifting then the lessor shall give two months notice to the lessee for vacating the said premises and lessee then shall hand over the possession of the said premises to the lessor on or before the expiry of the notice period. However, this right shall not be exercised by the lessor and will not be entertained to by the lessee earlier than 11 (eleven) months from the date of occupation of said house i.e. 1.4.2004.

12. However, subsequent thereto, another agreement was executed on 6.2.2005 in which it was stipulated that the parties mutually agreed that the defendant would vacate the premises by 31.5.2005. The relevant clause of the said agreement, which was exhibited as P3 and a copy of which was produced at the time of hearing, is reproduced below:

Now through this agreement it is mutually agreed between the parties that the first party would vacate the house in question by 31.5.2005 and would pay the rent due upto that date and would hand over its vacant possession to the second party along with all fixtures and fittings in good condition.

13. If the aforesaid agreement is perused, then it does not refer to the earlier agreement, i.e., Exhibit P2, at all and does not say that the conditions envisaged in that agreement by which the tenancy was created, would continue to hold the field. The subsequent agreement, Exhibit P3, was clearly in supersession of earlier agreement, Exhibit P2, granting right to the defendant to stay on the demised premises up to May, 2005. In such an eventuality, the contention of the learned Counsel for the appellant cannot be accepted and it cannot be said that notice for fifteen days which was issued pursuant to the provisions of Section 106 of the 1882 Act was defective.

14. That apart, the conduct of the defendant is also to be seen. He and him, but has tried to deviate from the lease agreement which he now seeks to enforce. In the written statement, he stated that there was no such agreement inter se between the parties and that he was in possession of the demised premises much prior to the inception of tenancy in April, 2004. He also denied the rate of rent being Rs. 8000/- per month and pleaded that it was Rs. 3000/- per month. In this view of the matter, when the defendant had denied the existence of lease agreement, he cannot now fall back upon the same to say that there was a stipulation therein requiring two months' notice to be given for termination of

the tenancy by either of the parties.

15. A pointed question was put to the counsel for the appellant as to whether the appellant was willing to furnish an undertaking to hand over the vacant possession of the demised premises to the plaintiff in the event of his being granted some time to which he pleaded no instructions.

16. Having regard to the aforesaid, the appeal is held to be without any merit and is dismissed.