

(2009) 03 SC CK 0236

In the Supreme Court Of India

Case No : Civil Appeal No. 4954 of 2001

Gurvachan Kaur and Others

APPELLANT

Vs

Salikram (Dead) through Lrs.

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2009) 03 SC CK 0236

Hon'ble Judges : G. S. Singhvi, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This is an appeal by the legal representatives of plaintiff - Jogendra Singh Ghai for setting aside the judgment of the High Court in second appeal preferred by defendant - Salikram, who is now represented by his legal representatives, whereby the decree of eviction passed by the lower appellate court was reversed and the suit of the plaintiff was dismissed.

2. Jogendra Singh Ghai filed suit against Salikram for eviction from the suit property on the ground of default in payment of rent since 30th November, 1971 and also on the ground that the suit property is required for the purpose of construction which cannot be carried out without getting the house vacated. In his plaint, the plaintiff averred that the defendant had been inducted as tenant on a monthly rent of Rs. 30/- and the latter had executed rent note dated 30.05.1967 (Exhibit-P2). In the written statement filed by him, Salikram claimed that plaintiff was not owner of the house. He also denied execution of rent note dated 30.05.1967 and pleaded that there did not exist landlord-tenant relationship between him and the plaintiff.

3. The trial Court framed the issues, gave opportunities to the parties to lead evidence and dismissed the suit by recording a finding that the plaintiff has failed to establish landlord-tenant relationship.

4. The plaintiff challenged the judgment and decree of the trial court in civil appeal No. 17A/83. During the pendency of the appeal, the plaintiff filed an application under Order 41 Rule 27 for examination of handwriting expert to prove the signature of the defendant on the rent note. By an order dated 16.04.1983, the lower appellate court allowed the application and remitted the record to the trial court with a direction that both the parties be given opportunity to examine handwriting experts. Civil Revision preferred by Salikram against that order was dismissed by the High Court. Thereafter, plaintiff examined handwriting expert - M.R. Deshpande (PW-3). Defendant, Salikram was also given opportunity to examine handwriting expert, but he did not avail the same. After receipt of the record from the trial court, the lower appellate court accepted the defendant's request for grant of further opportunity to examine handwriting expert and again remitted the record to the trial court. However, despite several opportunities given to him in a span of more than five years, the defendant failed to examine the handwriting expert. When the appeal was fixed for final arguments, an application was filed by the defendant for examining handwriting expert, but the same was dismissed by the lower appellate court vide order dated 15.12.1989 by observing that the applicant wanted to unnecessarily prolong disposal of the appeal. Thereafter, the lower appellate court considered the evidence which included statements of PW-1 - Nirmal Singh Ghai (son and attorney of the plaintiff- appellant), PW-2 - Ganesh Ram Agrawal (an attesting witness of Exhibit-P2) and PW-3 handwriting expert - M.R. Deshpande, and held that the plaintiff has been able to prove the landlord-tenant relationship between him and the defendant as also the fact that the latter defaulted in payment of rent and accordingly, decreed the suit.

5. Aggrieved by the judgment and decree of the lower appellate court, Salikram preferred second appeal. During the pendency of the appeal, plaintiff - Jogendra Singh Ghai died and his legal representatives were brought on record. The High Court re-appreciated the evidence and held that as the plaintiff has not been able to prove his ownership of the house on the basis of Exhibit-P8, he cannot be treated as landlord qua defendant-Salikram. The High Court observed that the plaintiff has failed to show as to how he dealt with the property between 13.08.1958, i.e., the date of alleged purchase and 30.05.1967, i.e., the date on which Salikram is said to have executed rent note and held that the defendant cannot be treated as a tenant of the suit premises. On the basis of these findings, the High Court reversed the decree of eviction passed by the lower appellate court and dismissed the suit filed by the plaintiff.

6. We have heard learned Counsel for the parties and perused the record. A reading of the impugned judgment shows that the High Court has not recorded a conclusion that the finding of fact recorded by the first appellate court on the issue of landlord-tenant relationship between the parties is perverse. The High Court also did not record any reason for not accepting the evidence of PW-1, PW-2 and PW-3, which was relied upon by the first appellate court for coming to the conclusion that rent note (Exhibit-P2) had been executed by the defendant.

It is settled law that in exercise of power u/s 100 of the Code of Civil Procedure, the High Court cannot interfere with the finding of fact recorded by the first appellate court which is the final court of fact, unless the same is found to be perverse. This being the position, it must be held that the High Court was not justified in reversing the finding of fact recorded by the first appellate court on the issues of existence of landlord-tenant relationship between the plaintiff and defendant and default committed by the latter in payment of rent.

7. Accordingly, the appeal is allowed, the impugned judgment rendered by the High Court is set aside and the one passed by the lower appellate court is restored.

8. No costs.