

(2005) 03 P&H CK 0102
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2347 of 1985

Kesri Dass Jain and Another	Vs	APPELLANT
Ahmed Hussain (Died) and Others		RESPONDENT

Date of Decision : 02-03-2005

Acts Referred:

Citation : (2005) 140 PLR 414 : (2005) 2 RCR(Rent) 123

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Vivek Sud, for the Appellant; Avneesh Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The landlord is revision petition aggrieved against the order passed by the learned Appellate Authority whereby the order of ejectment passed by the learned Rent Controller was set aside and the ejectment petition was dismissed.

2. It is the case of the landlord that the premises in dispute were let out to Ali Hussain and Faqir Chand on 29.10.1956 for their business. Ali Hussain died on 14.2.1977 and Faqir Chand left possession of shop and started business in another shop. The petitioner sought ejectment, inter-alia, on the ground that Ali Hussain and Faqir Chand have not paid arrears of rent from 1.9.1975 and they have sub let shop in dispute to Ahmed Hussain-respondent No. 9. The petition was contested by some of the legal heirs of Faqir Chand. A reply was filed to the effect that Ali Hussain and Faqir Chand took shop in dispute on rent and Faqir Chand separated his business from Ali Hussain. Thereafter, Ali Hussain who was old man joined respondent No. 9 to help him in business in shop in dispute. However, it was the stand of respondent No. 9-Ahmed Hussain that Ali Hussain was tenant in the shop in dispute before the year 1949 and thereafter, Faqir Chand joined Ali Hussain which came to end in the year 1960. Ali Hussain died on 14.2.1977 and respondent Nos. 1 to 8 are the legal heirs of Ali Hussain,

deceased. It is the case of respondent No. 9 that he became tenant in the shop in dispute at the monthly rent of Rs. 25/- in the year 1960 and has been paying rent to Kesari Dass, petitioner after obtaining his signature on the receipt in the accounts book. On the basis of said pleadings, the parties went on trial.

3. The rent note, Ex.P1/A dated 29.10.1956 was proved. On the basis of said rent note, the learned Rent Controller returned a finding that there exists relationship of landlord and tenant between the applicant Kesari Dass with respondent Nos. 1 to 8 i.e. successor in interest of Ali Hussain. The stand of respondent No. 9 that he was tenant on the basis of rent note, was found to be not tenable inasmuch as the rent note was not produced and the statement of Mohd. Jamil, RW1, attesting witness of the rent note was not found sufficient to prove the existence of rent note. The learned Rent Controller found that Exs.R1 to R25 are receipts without mentioning the name of person from whom Kesari Dass received rent. The last receipt Ex.25 is of dated 24.2.1969 and, thus, receipt relates to the period when Ali Hussain was alive. In respect of subsequent receipts, respondent No. 9 deposed that accounts were in separate book which has been lost. Thus, the learned Rent Controller concluded that receipt Exs.R1 to R25 do not prove that Kesari Dass was receiving rent from Ahmed Hussain with regard to shop in dispute. Still further, the assessment list, Exs.R45, R46, R47 and R48 pertaining to the year 1964, 1972, 1976 and 1979 contains cutting in the columns of occupier and, thus, cannot be relied upon and, therefore, they do not prove that Ahmed Hussain is the tenant in shop in dispute. In view of the statement of RW3 Faqir Chand, the Court found that after his separation, Ahmed Hussain used to work in the shop in dispute in order to help Ali Hussain. Still further, the learned Rent Controller found that the registration certificate Ex.RW/7/A though reflects Ahmed Hussain as the person working in the shop yet does not prove that he is running his business as tenant under applicant Kesari Dass.

4. However, the First Appellate Court reversed the finding recorded by the learned Rent Controller and found that Kesari Dass having admitted receipts Ex.R1 to Ex.R25 from the year 1961 till the year 1969 alongwith accounts books produced by Ahmed Hussain to the effect that Ahmed Hussain was a tenant under Kesari Dass. It considered that the accounts books do not contain the name of the person of the accounts yet it found that Faqir Chand when appeared as RW3 was not suggested that books of the firm Faqir Chand Ali Hussain had gone into the possession of Ahmed Hussain. Similarly, Ajander Hussain, RW6 son of Ali Hussain was also not suggested that the books produced by Ahmed Hussain belong to Ali Hussain. Thus, the Court found that Ahmed Hussain has produced such books of accounts and receipts who was doing active business in shop since 1960. The First Appellate Court also found that AW1 Ganga Sagar Jain has admitted that Ahmed Hussain has been running business in the shop in dispute since the year 1960 though he has stated that he has joint business with Ali Hussain, The Court found that Ahmed Hussain is doing business in the shop in dispute since the year 1960. From the statement of Mohd. Jamii, Faqir Chand,

Niranjan Singh and Ajander Hussain and even the certificate of the registration Exs.R43, R44 and RW7/A shows that the shop was registered with shop inspector to start business on 1.1.1961. Though there is a different business mentioned in the document yet the Court found that from the testimony of the witness produced by the landlord himself that Ahmed Hussain has remained in the premises as it is not the case of landlord that Ahmed Hussain own other shop than the shop in question. On the basis of statement of Ahmed Hussain, they found that, in fact, there is no discrepancy, as earlier, he was running the cloth business but in the year 1969, he switched over to shoe business. The Appellate Authority has also found that in the house tax assessment register, the name of Ahmed Hussain has been scored off and changed to Ali Hussain. Still further, the landlord has not produced his accounts books though he owned 15 shops and maintained the accounts books. Consequently, the Appellate Authority found that Ahmed Hussain is direct tenant under the petitioner.

5. The learned counsel for the petitioners has vehemently argued that the learned Appellate Authority has taken into consideration the fact that the appellant has not filed replication. Non filing of replication cannot be treated as a ground to prove admission of facts stated in the written statement. No doubt, the Appellate Authority observed that the replication has not been filed. But mere non filing of replication has not led to reversal of finding recorded by the learned Rent Controller.

6. The learned counsel for the petitioners has further argued that the rent note allegedly made by Ahmed Hussain has not been produced. Mohd. Jamil, RW1 does not remember any of the terms of the rent note. He even does not know the date when the document was written nor document is proved to have been signed in his presence. Such rent note is not written on the stamp paper as well. The learned First Appellate Authority has found that such document was executed more than 20 years ago and, therefore, it is not possible to remember and recapitulate the precise terms and conditions incorporated in any documents. The said reasoning cannot be said to be suffering from any error of law.

7. The receipts Ex.R1 to R25 pertain to the period from 1961 to 1969. Such receipts have been produced by Ahmed Hussain. No doubt, the name of Ahmed Hussain is not mentioned in the said receipts nor name of Ahmed Hussain is mentioned in the accounts books yet the facts remains that Ahmed Hussain has produced such receipts and accounts books. Faqir Chand appearing as RW3 and Ajandar Hussain appearing as RW6 has not been suggested that the said accounts books are one maintained by AH Hussain. Thus, the inference drawn by the learned Appellate Authority is possible inference in law based on appreciation of evidence.

8. The possession of Ahmed Hussain in the shop since 1960 is admitted by the landlord and his witnesses. However, such possession is attributed as a helper of AH Hussain. But the registration with the shop, the authorities vide Ex.RW7/A, in

fact, shows that the registration of the shop was taken by Ahmed Hussain in the year 1961. Had AH Hussain been in possession as tenant, the name of Ali Hussain would have been mentioned in such registration certificate. Similarly, the subsequent registration certificate vide Exs. R43 and R44 also reflects Ahmed Hussain as person carrying on business. Still further, House Tax Assessment Registrar, no doubt contains cutting but the cutting is changed from name Ahmed Hussain to Ali Hussain. The benefit of such cutting is to the landlord, allowed witness to take from such cutting. The petitioner is a landlord owning number of properties and maintaining the accounts books but has not produced accounts books to show receipts and rent from Ali Hussain in support of his stand that Ali Hussain continued to be his tenant.

9. Thus, the finding recorded by the Appellate Authority that Ahmed Hussain was; in fact, a direct tenant of the petitioner is a possible finding based upon appreciation of evidence. It cannot be said to be suffering from any patent illegality or irregularity.

10. Consequently, I do not find any merit in the revision petition and the same is dismissed with no order as to costs.