

(2016) 04 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1950 of 2012 (O&M).

M/s Bhagwanti Building Store, Panchkula and another

APPELLANT

Vs

Shri Sheel Kumar and another

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Evidence Act, 1872 — Section 3

Transfer of Property Act, 1882 — Section 106

Citation : (2016) 2 LAR 477 : (2016) 2 PLJ 363 : (2016) 3 RCRCivil 627 :
(2016) 2 RCRRent 106

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Pawan Kumar, Senior Advocate with Abhimanyu Batra, Advocates, for the Appellant; Puneet Jindal, Senior Advocate with Praveen Gupta and Varun Goyal, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Amit Rawal, J. - The appellant-defendants are aggrieved of the concurrent findings of facts and law, whereby suit for possession by way of ejectment of 1/2 portion of ground floor and 1/2 portion of basement of the demised premises, namely, SCO No.26, Sector 11, Urban Estate, Panchkula has been decreed. The defendants have been further directed to hand over vacant possession of the demised premises. Further, plaintiffs have been held entitled to recover Rs. 7500/- from the defendants, which the plaintiffs have already paid in Municipal Committee as house tax. The plaintiffs have also been held entitled to mesne profits @ Rs. 18,000/- per month from the date of institution of the suit till the handing over possession of the demised premises.

2. Mr. Pawan Kumar, leaned Senior Counsel assisted by Mr. Abhimanyu Batra, appearing on behalf of the appellant-defendants, in support of the grounds of appeal, has raised manifold submissions, which are enumerated herein below:-

a) That the suit, ex-facie, was not maintainable as the parties are governed as per the terms and conditions of the lease deed as there is relationship of landlord and tenant and the remedy, if any, for the respondent-plaintiffs is to seek ejectment, in case any ground of ejectment is made by invoking the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short "1973 Act");

b) The respondent-plaintiffs were served with a show cause notice dated 10.1.1989 of having occupied the showroom without obtaining the occupation certificate in contravention of the Haryana Urban Development Authority (Erection of Building Regulation), 1989, whereas the suit had been filed on 13.1.2006. Sub-section (3) of Section 1 of 1973 Act shall apply only to the building, construction of which has been completed on or after the commencement of this Act for a period of ten years from the date of its completion. Thus, the suit for possession seeking ejectment by invoking the provisions of Section 106 of the Transfer of Property Act, ex-facie, is not maintainable;

c) At the appellate stage, indulgence of the Lower Appellate Court was sought by moving an application under Order 41, Rule 27 CPC to place on record documents, Annexures A-1 and A-2 by way of additional evidence, but the same has erroneously been dismissed/rejected as Annexure A-2 is resumption order dated 8.12.2006, which shows that the allottee had occupied the SCO without taking occupation certificate from the office. Thus, the documents Ex.P20 and Ex.P21 dated 19.3.1996 granting approval of fresh building plan to the respondent-plaintiffs-subsequent transferees, would not give a cause of action to file this suit;

d) The documents Ex.P18 onwards have not been proved in accordance with law. Mere exhibition of the documents would not dispense with its proof. In support of his contentions, relied upon the Full Bench judgment of the Bombay High Court rendered in Hemendra Rasiklal Ghia v. Subodh Mody, 2009(1) R.C.R. (Rent) 249. He has also drawn the attention of this Court to the statement of PW-2, a Sub Divisional Clerk, Estate Office, HUDA, Panchkula, who, to a specific question in cross-examination admitted that Ex.P18 to Ex.P21 were not mentioned in the record vide which he was summoned nor he had been given any authorisation letter to appear in the witness box, much less the documents are not attested, but this aspect has not been noticed by the Courts below;

e) The order declining the application under Order 41, Rule 27 CPC has been assailed by taking the aid of provisions of Order 43, Rule 1A CPC, therefore, it is a fit case for remand to the Lower Appellate Court or to the trial Court for seeking the report, vis-a-vis additional evidence as the same goes to the root of the cause and would help the Court while adjudicating the lis;

f) Against the judgment and decree of the trial Court, both the parties had filed appeals as the respondent-plaintiffs were not satisfied with the grant of mesne

profits granted @ Rs. 18,000/- per month as the claim was to the extent of Rs. 50,000/- per month. Both the appeals have been dismissed, but there is no appeal at the instance of the respondent-plaintiffs and, therefore, Misc.Application bearing No.8201-C of 2012 claiming mesne profits is not maintainable.

3. By summing up the aforementioned arguments, learned Senior Counsel for the appellants urges this Court to formulate the following substantial questions of law for adjudication of the present appeal:-

i) Whether the building in question has been constructed within 10 years on the date of filing of the suit?

ii) Whether provisions of Rent Act are applicable or not is the prima question in this case?

iii) Whether the learned Lower Appellate Court was justified in rejecting the application for additional evidence?

iv) Whether mere exhibition of the documents would dispense with the requirement of its proof or not?

4. On the other hand, Mr. Puneet Jindal, learned Senior Counsel assisted by Mr.Praveen Gupta Advocate and Mr. Varun Goyal, Advocate, appearing on behalf of respondent No.2 submits that the concurrent findings of fact rendered by both the Courts below are based upon the appreciation of oral and documentary evidence. He further submits that SCO No.26, Sector 11, Urban Estate, Panchkula was rented out to the defendants, i.e., 1/2 portion of ground floor and 1/2 portion of basement @ Rs. 10,000/- per month w.e.f. 1.4.1998 and the tenancy was on monthly basis. The parties had mutually agreed to increase the rent to the tune of Rs. 1,000/- after expiry of each year and to give one month prior notice in writing by either party for vacating the demised premises and the defendants were directed to pay the house tax which they failed to pay and on account of the same, the tenancy, vide notice dated 10.11.2005, was terminated. It was further submitted that the plot originally was allotted to Satya Pal in the year 1987 and the respondent-plaintiffs were issued re-allotment letter Ex.P1 on 23.1.1996. In support of his contention, he has also raised manifold arguments, which are enumerated herein below:-

a) In Ex.P1, re-allotment letter dated 23.1.1996, it has been mentioned that the extension fee paid by the previous allottee was valid upto 31.12.1995 and the fresh extension fee shall be applicable as per the policy, to be paid by the respondent-plaintiffs on 1.1.1996. The extension only applies to the plots which have not been constructed as per the terms and conditions of the original allotment letter, thus, for all intents and purposes, at the time of re-allotment, there was no construction of the SCO;

b) Ex.P20 is the revised site report by the concerned Junior Engineer, who had inspected the premises in pursuance to the submission of the revised plan on

12.4.1997, which was in respect of the basement, ground floor, first floor and second floor and against column No.13, dealing with the unauthorised occupation, the answer was in positive, i.e., "Yes". Assuming for the argument sake, though not admitted, the show cause notice Ex.A-1 is taken on record, that had been served to the erstwhile owner which has nothing to do with the plaintiffs, whereas on the contrary, Annexure A-2, resumption order helps the case of the respondent-plaintiffs to bring suit within ten years from the date of completion of the construction as on reading of the same, it is revealed that the resumption order which is dated 8.12.2006 was not only on account of the non-occupation of the SCO but with regard to the rear court yard being covered by pucca roof and the front elevation having changed.

c) Ex.P21 is the approval of the fresh building plan which has been issued on 19.3.1996, whereby permission was granted to raise the construction. It is from this date, the period has to be reckoned for the purpose of applicability of the provisions of the Act as to whether the applicability of the Rent Act would apply or not, in essence ten years had not expired and, therefore, the suit for possession by way of ejectment from the demised/tenanted premises was filed. All these objections have been dealt with in extenso by both the Courts below and, therefore, no substantial question of law arises for adjudication, much less determination by this Court and urges this Court for dismissal of the appeal.

5. I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the plea of Mr.Pawan Kumar and the appeal deserves to be dismissed, for, summoning the record from the concerned office, normally on the summons it is mentioned that the concerned clerk to bring the file pertaining to the concerned allotment and the entire file is summoned, therefore the summons would not contain the particulars of the orders required to be summoned. It is only from the file, the documents are put to the witness for the purpose of proving the case by either of the parties. The exhibition of the documents was not objected to at the time of cross-examination. It is settled law that in the absence of the objection to the aforementioned documents, the party cannot be prevented to take the objection and this view is also culled out by the Bombay High Court and various other Courts, much less this Court also. The date to be reckoned for the purpose of bringing the suit within the provisions of Transfer of Property Act and out of the ambit of the rigor of 1973 Act is the date of sanctioning of the revised plan, which is 19.3.1996, whereas the suit has been filed on 13.1.2006, i.e., within ten years and, therefore, the appellant-defendants cannot take the benefit of applicability of the Rent Act.

6. Vis-a-vis declining of the application seeking additional evidence, I am of the view that serving of the show cause notice to the erstwhile owner would be meaningless, whereas on the contrary, core issue for the adjudication of the lis as to whether respondent-plaintiffs could invoke the jurisdiction of the Court under Section 9 of the Act is Ex.P1 (re-allotment letter), which has been proved

in accordance with law. For the sake of brevity, the relevant portion of the letter reads thus:

"The extension fee paid by the previous allottee is valid upto 31-12-95. The fresh extension fee will be Rs. As per Policy to be paid by you on 1-1-96.

You shall have to pay the balance Rs. as below instalment of Rs. As below."

7. On perusal of the aforementioned document, it is irresistibly concluded that the extension is only applicable where the construction has not been raised as per the terms and conditions of the original allotment, otherwise, the HUDA is precluded from charging the extension fee. The inspection reports Ex.P18 to Ex.P21 also prove the factum that there was certain violations with regard to the front elevation and the building was resumed in December, 2006 after filing of the suit.

8. It is settled law that where the notice, in terms of the provisions of Section 106 of the Transfer of Property Act, terminating the tenancy has been issued the defendants would have no grievance to defend the ejectment and have to surrender the possession as and when the interference of the Court is sought.

9. There is no dispute with regard to the determination of the mesne profits of Rs. 18,000/- per month, which has been assessed by the trial Court on the basis of the documentary evidence as well as the terms and conditions of the lease deed, therefore, the application claiming the mesne profits at this stage, in my view, is not maintainable and is hereby rejected.

10. Keeping in view the aforementioned facts and circumstances, the judgments and decrees of the Courts below are upheld. I do not find any illegality and perversity. There is no merit in the appeal. Accordingly, the substantial questions of law are answered in favour of the respondent- plaintiffs and against the appellant-defendants.

11. The appeal stands dismissed.