
(2000) 02 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3300 of 1999 (O and M)

Raj Kumar Aneja and another

APPELLANT

Vs

SQN. LDR. Gurdial Singh (Retd.) and others

RESPONDENT

Date of Decision : 17-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2000) 2 RCR(Rent) 90

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : Gurpreet Singh, for the Appellant; Anuj Raura for Respondents 1 to 5 and Mr. Kashmiri Lal Goyal, Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sudhalkar, J.—Respondents No. 1, 2 and 5 (hereinafter referred to as the "landlords") had filed eviction petition against Respondent No. 6 (original Respondent No. 1 before the Rent controller) the present Petitioners and three others, seeking their eviction, The contention of the landlords is that the Petitioners and Respondent No. 6 have materially impaired the value and utility of the premises: that they are in arrears of rent: and that Respondent No. 6 has sub-let the premises to the Petitioners. The trial court dismissed the rent petition however, it was allowed by the lower appellate Court. Respondent No. 6 has admitted the contention made in the rent petition. However, according to his written statement, the sub-letting and the change of user in the premises are made with oral consent of the landlords.

2. The present Petitioners had in their initial written statement accepted the petition that they had taken the premises from Respondent No. 6. Their contention in the original written statement is that Respondent No. 6 had advertised in the press for the availability of the cabins on the first floor of the premises and that they have been inducted as licensee by him. Subsequently, they filed application for amendment of the written statement and changed their

stand that Respondent No. 6 was an agent of the landlords and they were inducted as tenants by him. The allegation of sub-letting was denied. The amendment which they sought was rejected by the Rent Controller. However, the Petitioners succeeded in the revision petition filed by them. It was C.R. No. 1414 of 1995. By the order in C.M. this Court allowed the amendment. However, it was without going into the merit of the controversy.

3. The issues were framed and after hearing the counsel for the parties the Rent Controller was pleased to dismiss the eviction petition. However, in appeal filed by the landlords the eviction petition was allowed and eviction of the petition was ordered from the demised premises. Being aggrieved by the said judgment of the Appellant authority, this revision petition has been filed.

4. I have heard the learned Counsel for the parties and Respondent No. 6 in person. The learned Counsel for the Petitioners has argued that the lower Appellate court has erred in allowing the eviction petition and according to them the admissions made in the written statement stood explained and, therefore could not be held to be conclusive against them.

5. From the written statement filed by Respondent No. 6, It is clear that he has given a consenting written statement and in the prayer clause he has mentioned he is ready to vacate the premises and he has no objection if necessary orders are passed against the sub-tenants though in the last line of the prayer clause he has mentioned that petition may be dismissed with costs. Regarding making of cabins and sub-letting mentioned in paragraph 3 of the rent petition, he has stated that the cabins were made and were sublet with the oral request of the landlords. He has also mentioned that he has never refused to vacate the premises.

6. The Rent controller had found that it was a collusive affair between the landlords and Respondent No .6 and they had made an arrangement simply to find out a way to overcome the statutory provisions of law. The lower Appellate Court relied mainly on the admissions made by the Petitioners in the original written statements. Learned Counsel for the Petitioners argued that when the original statements were permitted to be amended, the Petitioners could explain the admissions and show from the circumstances that the stand taken by them in the later written statement was correct. Some authorities have been cited by the learned Counsel for the parties in this case.

7. Counsel for the Petitioners has cited before me the following cases regarding amendment:

- (i) Sukhdev Raj v. Rukmani Devi and others. (1988) 93 PLR 679
- (ii) Akshaya v. P. Anjanappa 1996 (1) ISJ (Banking) 268.
- (iii) Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another,
- (iv) Ganesh Trading Co. Vs. Moji Ram,

(V) Jia Lal and Another Vs. Met. Savitri Devi and Another,

(Vi) National Insurance Co. Ltd. Vs. Sucha Singh and Others,

(VII) Sh. Ghisa Ram Gupta Vs. Smt. Meeran Devi and Another,

8. In the case of Sukhdev Raj (supra), it has been held that a sub-tenant cannot be ordered to be ejected on the ground of non-payment of rent." This authority does not help the Petitioner.

9. In the case of Akshaya (Supra), the Supreme Court has held that admission can be explained and even inconsistent pleas could be taken in the proceedings. In that case in paragraph 6 of the written statement, a definite stand was taken but subsequently in the application for amendment, it was sought to be modified. The supreme Court in that case held that it found no material irregularity committed by the High Court in exercising its power u/s 115 CPC permitting amendment of the written statement.

10. At present, I am not deciding the question whether the amendment should have been allowed or not. However, the above observations do go to show that inspite of the admissions, the same can be explained away. Same view has been taken by the Supreme Court earlier in the case of Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, in which it has been held therein that admissions are not conclusive though they can be the best evidence. However, if they are not conclusive, the evidence as a whole has to be considered.

11. In the case of Ganesh Trading Company (supra), the supreme court held that it is only if lapse of time has barred the remedy on a newly constituted cause of action that the courts should ordinarily, refuse prayers for amendment of pleadings. As stated above, I have not to decide the question whether to allow the amendment or not to allow it.

12. In the case of Panchdeo Narain Srivastava (Supra), the Supreme Court has held that it cannot be said that by amendment an admission of fact cannot be withdrawn. The case of Jialal (Supra) is regarding filing of written statement to the amended plaint. It is of no relevance in far as this case is concerned.

13. Therefore, from the law laid down by the Supreme Court in the case of Panchdeo Narain Srivastava and in the case of Narayan Bhagwantrao Gosavi Balajiwale (supra), the amendment can be made and the combined effect of both the cases will be that admission of fact can be withdrawn.

14. Therefore, it will not be proper to base the conclusion regarding finding of fact in such a case only on admission which has been withdrawn.

15. Learned Counsel for the Petitioners has cited before me the case of Sh. Ghisa Ram Gupta Vs. Smt. Meeran Devi and Another, In the said case the ejectment petition was filed by the landlord against his daughters-in-law-tenant and alleged sub-tenant. There was a rent note between the landlord and tenant, which was

held to be a fake document. It was further held therein that tenant could be ejected only if the landlord can establish on record that there is relationship of landlord and tenant between him and Respondent tenant.

16. Hence, in this case if it is held that Respondent No. 8 was not actually a tenant of the landlords, then the present Petitioners cannot be evicted on the ground of sub-tenancy and in such a case the other rigor of the Rent Act also will not operate against them because in the Rent petition they are alleged as sub-tenant only.

17. As against this, learned Counsel for the landlords has cited before me the case of Mrs. Mohini Suraj Bhan v. Vinod Kumar Mittal, in (1985) 87 PLR 501. The learned Single Judge in that case has relied on the principles laid down by the Supreme Court in which the powers of the High Court in deciding the revision petition have been stated. Relying on the supreme Court judgment, the Learned Single Judge has held therein that no impropriety and illegality in the finding of the Appellate Authority could be made out and the finding of fact so recorded was binding on the High Court and not open to challenge on the ground that a different view of the evidence produced was possible. The view of the Supreme Court relied upon in that case was as under:

In fact it has to be noticed that u/s 25 of the High Court calls for and examines the record of the appellate authority in order to satisfy itself. The dominant idea conveyed by the incorporation of the words to satisfy itself u/s 25 appears to be that the power conferred on the High Court u/s 25 is essentially a power of superintendence. Therefore, despite the wide language employed in Section 25 the High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority.

18. Learned Counsel for the landlords has also cited before me the case of Dev Kumar (Died) through LRs. Vs. Smt. Swaran Lata and others, . In that case, the Supreme Court has held that u/s 15 (5) of the Rent Act, the High Court is empowered to examine the legality and propriety of the order under revision but the revisional court must be reluctant to embark upon an independent reassessment of the evidence and supplant the conclusion of its own so long as the evidence on record admitted and supported the one raised by the Courts below.

19. So far as the powers of the High Court are concerned, there cannot be any dispute. Normally, High Court in revision will not interfere with the findings of the Court below. However, if the findings of the court below are based on wrong interpretation of law or not according to law then even the finding of fact in such a case can be successfully challenged in a revision petition. This also can be found from the observations made by the Supreme Court in the case of Dev Kumar (Supra).

20. The lower Appellate Court in this case while reversing the judgment of the Rent Controller had made certain observations which require to be taken into

account for considering whether this Court sitting in revision can go into the correctness of the findings of the Appellate Authority. The Appellate Authority has observed in paragraph 18 of the judgment that:

They have not specifically pleaded direct tenancy even in their amended written statement. Further more, there was a registered lease deed executed between the Appellants and Respondent No. 1 and also agreement between Respondent No. 1 and the contesting Respondents.

21. It can be found that the above observations are not in consonance of the record. Even in paragraph 3 of the amended written statement filed by the Petitioners, quoted by the learned Appellate Authority in paragraph 17 of its judgment, Petitioners have mentioned that:

basically the correct picture is that Respondents No. 5,6 and 8 has been put in the cabin as a tenant with the consent and blessings of the Petitioner through his agent i.e. Respondent No. 1 Respondent No. 1 being a dummy the Respondents No. 5,6,and 8 claim himself to a direct tenant under the Petitioner and is ready and willing to pay the rent to him.

22. In paragraph 3 of the amended written statement, it is specifically mentioned by the Petitioners that Respondents No. 6 is an agent of the landlord and it was a mutual understanding between them that Respondent No. 6 will not pay rent which will give opportunity to the landlords to get eviction order against the Petitioners. Therefore, the observation of the learned Rent Controller mentioned above is beyond the facts recorded in this case Secondly, it has been observed by the learned Appellate Authority in paragraph 12 (it should be 21) of the judgment that there is no averment in the original written statement filed on 26.2.1994 that Respondents No. 5 and 6 are direct tenants under the landlords. In the original written statement admissions were made that there was no existence of relationship between the landlord and tenant. However, as mentioned above, this admission cannot be said to be conclusive. The Appellate Authority has observed that there is no specific averment to the effect that the Petitioners are tenants under the, landlords. However, as stated above, this observation is not in consonance with the pleadings.

23. The Learned Appellate Authority has also relied on the Rent note which is registered between the landlords and Respondents No. 6. In this connection, the learned Counsel for the landlords has relied on the case of M/s. Fabril Gasosa v. Labour Commissioner and Ors., reported in J.T. 1997 S.C.(2) 171 wherein it has been observed by the Supreme Court that:

Section 92 of the Evidence Act, 1872 also lays down that when the terms of any contract, grant or settlement, as are required by law to be reduced to the form of a document, have been proved as per the provisions of Section 91 of the Evidence Act. No evidence of any oral agreement or settlement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to or subtracting from its terms.

(emphasis supplies)

24. It can be found that the principles do not apply as in between the Petitioners and landlords because the Petitioners were not party to the rent note. Therefore, though the rent note is a registered rent note if it is a fake one, the Petitioners can challenge it.

25. In the light of these circumstances and the prima facie view that can emerge from these positions, the finding arrived at by the Learned Appellate Authority cannot be said to be legal as the view taken by it is not in consonance with the facts and laws. When is so, this Court can interfere with this finding.

26. In view of the above position, it will be necessary for me to find out whether the finding arrived at by the Appellate Authority was correct or not. As stated earlier, the Appellate Authority has relied mainly on the admission. However, the Petitioners have given reasons for amendment of the written statement which can be found in the application for amendment given by them, In the application for amendment , it has been mentioned that subsequent to the filing of the written statement, the Petitioner came to know that Respondent No. 6 was simply an agent of the landlord for collecting rent. In the amended written statement, Petitioners had stated that Respondent No. 6 was the agent of the landlords for collecting rent and it was simply a case of sham tenancy. The landlords have adopted modus operandi whereby Respondent No. 6 was made as a tenant on paper but actually he was their agent. It can be seen that in the written statement filed by Respondent No. 6, he has admitted the claim of the landlords and has made a prayer mentioned above.

27. The deposition of the Petitioners was recorded. Petitioner No. 1 was examined as RW2 and Petitioner No. 2 was examined as RW1. Petitioner No. 2 has stated in the deposition that in the month of May, 1994 he had heard a conversation between Respondent No. 6 and the landlord-Gurdial Singh and his doubt that they are one and the same person, was confirmed. Petitioner No. 2 has been cross-examined. It can be seen from the cross-examination that when he filed the first written statement, he was having a different counsel. It is also mentioned by him that the moment he changed his counsel he moved an application for amendment of the written statement. Even inspite of the long cross-examination, it cannot be found from it that his stand can be assailed. Similar is the position which the deposition of the other Petitioner.

28. Respondent No. 6 is Advocate by profession. It is not shown by him as to why he took the premises on rent if he wanted to sub-let it to somebody or even to give it to somebody else as licensee. He should have been clear on this point in his written statement. This he has not done. On the contrary, he has mentioned in the written statement, which on the face of it shows that it is collusive. He should have stated as to why he took possession as alleged tenant, what was his purpose and why he parted with the possession of the Petitioners.

29. RW3 is Narinder Pal Singh. He is also having his office on the first floor of the

same building. He has Stated that Respondent No. 6 collects Rent and hands over the same to the landlord-Gurdial Singh. He is an independent witness and being a tenant of the landlord, there is no reason as to why he should have been disbelieved. The Rent Controller had observed that Respondent No. 6 had admitted the claim of the landlords but inspite of this, he contested the entire proceedings and he cross-examined most of the witnesses of the Petitioners. This observation is not shown to be false. The Rent Controller had come to a specific finding that Respondent No. 6 had made arrangement with the landlords just to find out a way to overcome the statutory provisions of law and the tenancy between the landlords and Respondent No. 6 was only a sham transaction.

30. A person may lie but circumstances will not. The above circumstances go to show as to how the Petitioners came into possession. They have come with the help of Respondent No. 6. However, the question is whether they have come through him or not if Respondent No. 6 is really the agent of the landlords, then it cannot be said that the Petitioners have come into possession through him because whatever an agent does is an act deemed to have been done by the principal.

31. The landlord-Gurdial Singh is examined as PW1. He has stated in his cross-examination that Respondent No. 6 is a Advocate and he did not know if he was having any business in S.C.O. 1108-09, Sector 22-B. Chandigarh (this is the premises owned by the landlords). PW1 has further stated in his cross examination that Respondents No. 6 was inducted by him as a tenant on 1.5.1999. The cross-examination was made in year 1994. RW1 has further stated that he has been visiting the disputed premises but he never bothered to know the name of the firm of the tenant-Respondent No. 6. He has also stated that he has never bothered to know as to what Respondent No. 6 was doing as he was concerned with the payment of rent and not about his firms. PW1 has further stated that he did not know since when Respondent No. 6 was practicing as an Advocate. The witness has also stated in his cross-examination that Respondent No. 6 has constructed cabins on the two floors without his consent but he did not know the date when the cabins were erected. He has further stated that he did not remember the year and the date when the cabins were constructed. PW1 has also stated in his cross-examination that when Respondent No. 6 stopped making payment of the rent, he filed a petition after making oral request of payment of rent and that he was not concerned with the construction of cabins.

32. PW1 does not state as to when the cabins were constructed by Respondent No. 6. On the contrary, he has stated that he is not concerned about it. The way in which the case is put up by the landlords and Respondent No. 6 goes to show that the rent note is a sham transaction and was only a mode to do away with the provisions of the Rent Act. Actually, Respondent No. 6 has acted as an agent of the landlords in letting out the premises to the Petitioners.

33. Respondents No. 6 has argued in person. He has drawn my attention to page

577 of the record which is a photo-copy of the passport which does not bear any Exhibit mark over it. However, the mentioning in the passport that he is a practicing lawyer does not take this case anywhere. He has argued that the Petitioners are not the tenants but they only licensees. However, from the circumstances mentioned above, Petitioners cannot be held to be just the licensees. It may be seen that lease agreement is a registered agreement but Respondent No .6 was satisfied in contending that there was oral consent for sub-letting and making the changes. In this revision petition, no prayer is made against him and he is only a formal party.

34. In view of the fact and law discussed above. I find that the findings of the lower Appellate Court cannot stand. At the cost of repetition, it can be stated that in view of the findings against the record this could go into the correctness of the findings. This petition deserves to be allowed.

35. As a result, this petition is allowed with costs. The judgment of the lower Appellate Court is set aside. Eviction petition is dismissed.