
(2009) 09 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3344 of 2008 (O&M)

Randhir Singh and another

APPELLANT

Vs

Suresh Kumar

RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Citation : (2009) 4 RCR(Civil) 670 : (2009) 2 RCR(Rent) 367

Hon'ble Judges : Mrs.Sabina, J

Advocate : Mr. Roopak Bansal, Advocate. Mr. B.R. Mahajan, Advocate.,
Advocates for appearing Parties

Judgement

Mrs. Sabina, J.—Plaintiff Suresh Kumar filed a suit for possession by way of eviction and for recovery of mesne profits, which was decreed by the Civil Judge (Jr.Divn.) Sonapat vide judgment and decree dated 20.12.2007. In appeal, the said judgment and decree were upheld by the Additional District Judge, Sonapat vide judgment and decree dated 25.8.2008. Hence, the present appeal by the legal representatives of the defendant (since deceased).

2. Brief facts of the case, as noticed by the lower appellate Court in para Nos. 2 to 4 of its judgment, are as under :

"2. The plaintiffrespondent filed suit for possession of the disputed property measuring 3 kanals 1 marla as detailed in para no. 3 of the plaint with further relief of recovery of Rs. 10,000/ as mesne profits for the period of 10.8.1999 to 9.10.1999 and further mesne profits at the rate of Rs. 5,000 per month from the date of filing of the suit till delivery of vacant possession."

3. The case of the plaintiffrespondent, in brief, is that he purchased land measuring 3 kanals 1 marla, as described in para no.1 of the plaint, from Umrao Singh for a consideration of Rs. 25,500/ vide registered sale deed dated 7.8.1984. On the basis of the sale deed, mutation bearing no.3094 was sanctioned in his favour on 14.9.19085, by carving out Titamma in respect of the land bearing Rect. & Killa No. 56/12/1 (31). The said land was leased out to the

defendant for a period of fifteen years commencing from 10.8.1984. On the strength of the lease deed, mutation no. 3121 was sanctioned in favour of the defendant. The land was leased out to the defendant for installation of a petrol pump and the lease money was fixed Rs. 3600/ per annum payable at the rate of Rs. 300/ per month. Monthly tenancy commenced from 10th of each calendar month and expired on 9th day of the following calendar month. It has further been averred that there had been litigation between the parties regarding recovery of lease money, for rendition of accounts and dissolution of partnership firm constituted by the parties. The defendant had been taking inconsistent pleas with regard to the status of the plaintiff as partner in the partnership firm and with regard to the recovery of lease money from the defendant on the strength of the lease deed. In various judgments, the defendant has been held to be a tenant during the period of lease. The defendant also admitted his possession as tenant under the plaintiff. The defendant raised plea that an amount of Rs. 30,000/ was borrowed by him from the plaintiff and interest at the rate of 10 per cent i.e. Rs. 300/ per month was to be paid on that amount. In civil suit No. 291 of 24.8.1987, the plea raised by the defendant was not accepted by the Court. The appeal filed against the said judgment was dismissed on 4.5.1990. The plaintiff further filed a civil suit No. 722 of 1990 on 27.8.1990 for recovery of lease money of Rs. 10,800/ for the period of 10.8.1987 to 9.8.1990 and that suit was also decreed with costs in his favour on 21.1.1994. The appeal filed against the said judgment was dismissed on 16.2.1997. The plaintiff further filed suit No. 423 of 1993 for recovery of lease money of Rs. 10,800/ for the period of 10.8.1990 to 9.8.1993, which was decreed on 27.1.1998. Civil suits for recovery of lease money for the period of 10.8.1993 to 9.8.1996 and 10.8.1996 to 9.8.1999 were also pending adjudication. It has further been submitted that the tenancy of the defendant was for a fixed period, which ended on 9.8.1999. After expiry of the fixed term, the tenancy of the defendant stood automatically determined. Thus, the possession of the defendant after efflux of time of tenancy originally fixed in the registered leased deed dated 10.8.1984 is illegal and unauthorised, but he failed to hand over possession of the disputed property to the plaintiff in spite of repeated requests. Ultimately, a notice was got served by the plaintiff upon the defendant to hand over the vacant possession of the suit property and for payment of mesne profits for illegal occupation, but the same did not yield any result.

4. The defendantappellant filed written statement controverting the claim of the plaintiff on various pump was issued in favour of the defendant, being freedom fighter. In the application form, there was column for nominating financier. Fatherinlaw of Tilak Raj was the financier and he was approached through Tilak Raj at the instance of some friend and his name was written in the form. Initially, financial help of Rs. 30,000/ was sought, out of which land for the petrol pump was purchased. Agreement to that effect was executed by the defendant, but Tilak Raj became dishonest and he wanted to take benefit of his position. The defendant was humiliated on account of the depressed condition of his mind.

Tilak Raj managed to get the sale deed executed and registered in the name of his son i.e. the present plaintiff Suresh Kumar and also got written the other document, which is said to be alleged lease deed. The same were without the intention of the parties and as a result of fraud and undue influence exercised upon the defendant, therefore, such documents are void abinitio and not binding upon the right and title of the defendant. It has further been submitted that Tilak Raj previously instituted a suit for declaration to get declared his son Suresh Kumar as partner in the business of the petrol pump being run by the defendant. The said suit was got dismissed on 16.3.1998. Since the year 1985, Tilak Raj had been pursuing one litigation after the other. One similar suit was decided by the court of Sh. P.L. Ahuja, and that judgment was reversed by the learned appellate court, which kept the status of the parties as per dictum of the civil suit for declaration pending at that time, which was got dismissed on 16.3.1998. After dismissal of the said suit, the plaintiff was left with no such status, therefore, he is not entitled to recover Rs. 300/ per month as lease money. The plaintiff has no concern with the suit land whereas the defendant is owner in possession thereof. Therefore, the defendant is not bound to make payment of any amount and deliver possession of the disputed property to the plaintiff. Other averments made in the plaint have been denied."

On the pleadings of the parties, following issues were framed by the trial Court on 26.2.2001 :

- "1. Whether the tenancy of the defendant stands automatically determined on the expiry of period of lease on 9.8.1999, if so, to what effect ? OPP
2. Whether the notice of termination of tenancy is illegal and not binding on the defendant ? OPD
3. Whether the plaintiff is entitled to recover damages of Rs.10,000/ for use and occupation of the premises in dispute for the period from 10.8.1999 to 9.10.1999 ? OPD
4. Whether the plaintiff is entitled to decree for possession of the suit property ? OPD
5. Whether the Court has no jurisdiction to try the present suit ? OPD
6. Relief. "

On the basis of amended pleadings of the parties, the following issues were also framed on 4.5.2006 :

- "1. Whether the plaintiff is entitled for possession of the suit property, as alleged, if so to what effect ? OPP
2. Whether the plaintiff is entitled for recovery of Rs. 10,000/ as mesne profits of the property for the period from 10.8.1999 to 9.10.1999 and future mesne profit at the rate of Rs.5,000/ per month as alleged, if so to what effect ? OPP

3. Relief."

After hearing learned counsel for the parties, I am of the opinion that the present appeal deserves to be dismissed.

3. The plaintiff filed a suit for possession by way of eviction of the defendant from the suit property and also for recovery of mesne profits. Parties led their evidence in support of their case. The Suit bearing No. 496 of 1984 was filed by the plaintiff for declaration. During the pendency of that suit another suit was filed by the plaintiff bearing No. 291 of 24.8.1987 for recovery of Rs. 10,800/ as rent. It was alleged that the defendant was a tenant over the property in dispute and was running a petrol pump on payment of yearly rent of Rs. 3,600/. The said suit was decreed by the trial Court on 7.8.1989 and the appeal filed against the said judgment and decree was disposed of with a direction that the amount realized from the defendant be adjusted according to the terms of the decree of already pending suit. However, suit No. 496 of 1984 was dismissed in default vide order dated 16.3.1998.

4. The case of the plaintiff is that he had purchased the suit land vide registered sale deed dated 7.8.1984 for a consideration of Rs. 25,500/. The defendant had set up a petrol pump on the said land in dispute. The sale deed in question was signed by the defendant as an attesting witness. He never challenged the said sale deed. Ex.P6 is the copy of the lease deed. The said lease deed is a registered document. As per the same, the land in dispute was given on lease to the defendant for fifteen years i.e. from 10.8.1984 to 9.8.1999. After expiry of the said lease deed, the possession of the land was liable to be handed over to the plaintiff by the defendant. It has been observed by the learned Additional District Judge in the impugned judgment that in the suit filed by the plaintiff bearing No. 496 of 1984, the plaintiff had pleaded that the land was exclusively purchased by him vide sale deed dated 7.8.1984 and thereafter, he entered into a partnership with the defendant on 8.2.1985 and the shares of the parties in business were to the extent of 50% each. Hence, he was entitled to get share in the property made by the defendant while running the petrol pump.

5. Written statement was filed by the defendant in the said suit and execution of the partnership deed was denied. It was averred that the land was, in fact, purchased by the defendant by taking a loan of Rs.30,000/ from Tilak Raj and the partnership deed might have been got fraudulently scribed by Tilak Raj as defendant had signed certain documents for security purposes. During the pendency of the said suit, another suit was filed by plaintiff bearing No.291 dated 24.8.1989 for recovery. The amount of Rs.10,800/ was held to be recoverable by the plaintiff by the trial Court but in appeal, it was held that the same would be subject to the decision of suit No.496 of 1984. However, the present suit has been filed for eviction after the expiry of the lease period. Hence, both the Courts below rightly held that the present suit was maintainable. The suit of the plaintiff regarding recovery of mesne profits was also rightly decreed by the Courts below from the date of filing of the suit till actual delivery of possession of the land in

dispute as the defendant has remained in possession of the suit land after the expiry of the lease period.

No substantial question of law arises in this regular second appeal. Accordingly, the same is dismissed.