
(2010) 03 P&H CK 0223

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1520 of 1985

Rattan Lal

APPELLANT

Vs

Jyoti Parshad

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Evidence Act, 1872 — Section 35

Citation : (2010) LabIC 3432 : (2010) 3 RCR(Civil) 574 : (2010) 2 RCR(Rent) 101

Hon'ble Judges : Vinod K.Sharma, J

Judgement

Vinod K.Sharma, J.

1 This regular second appeal, by the plaintiff/appellant, is directed against the judgment and decree dated 8.1.1985, passed by the learned Courts below, vide which the suit for possession of shop No. 2236, Ward No. 8, Bara, Meham, stands dismissed.

2 The plaintiff/appellant filed a suit for possession, on the pleadings, that the plaintiff was owner of the shop. The case of the plaintiff/appellant was, that the shop was rented out to Roop Narain in the years 1944 and he had executed a rent not to this effect. Thereafter, another rent note was executed by Roop Narain in favour of the plaintiff/appellant in the year 1954. The third rent note was executed on 17.6.1959 for a period of eleven months on payment of annual rent of Rs. 168/ (Rupees one hundred and sixty eight only). Roop Narain died on 11.7.1979.

3 The case of the plaintiff/appellant was that Roop Narain being a statutory tenant his tenancy came to an end on his death. The plaintiff/appellant also pleaded, that defendant No. 2 i.e. Padam Sain was put in possession as sublessee of Jyoti Parshad, defendant No. 1, who is son of Roop Narain. Therefore, the defendants were trespassers in the shop.

4 The suit was contested by the defendants by filing separate written

statements. Jyoti Parshad son of Roop Narain took a stand that Roop Narain had migrated to Jind about 22 years back and had started his business there. Roop Narain had vacated the shop. Thereafter, it was given to Padam Sain defendant No. on rent about 20 years back.

5 The stand of defendant No. 2 was also similar, wherein it was pleaded that Roop Narain left Meham for Jind about 22 years back and the shop was rented out to defendant No. 2 by the plaintiff/appellant. It was also the case set up by defendant No. 2, that he was paying rent to the plaintiff/appellant. He denied the averments made by the plaintiff/appellant, that defendant No. 2 was a sub lessee of Roop Narain or anybody else. Objection to the jurisdiction of the civil Court was also taken, besides pleadings, that the plaintiff/appellant had no cause of action. It was also pleaded, that plaintiff was estopped by his own conduct from filing the present suit.

6 On the pleadings of the parties, the learned trial Court framed the following issues :

"1. Whether Roop Narain father of defendant No, 1 was in occupation of the shop in dispute as tenant at the time of his death ? OPP

2. Whether the defendants are in possession of the shop in dispute as trespasser ? OPP

3. Whether the defendant No. 2 is a tenant of the shop in dispute ? OPD

4. If issue No. 3 is proved, whether this Court has got no jurisdiction to try this suit ? OPD

5. Whether defendants are entitled to special costs ? OPD

6. Relief."

7 The learned trial Court took up issues No. 1, 2 and 3 and on appreciation of evidence, decided all the three issues against the plaintiff/appellant. Reason for this conclusion was, that one of the rent notes relied upon by the plaintiff/appellant was no signed by Roop Narain nor the plaintiff was able to produce any evidence to show the receipt of rent from Roop Narain till the date of his death i.e. in the year 1979. Whereas, on the other hand, the defendant No. 2 produced on record the vahi entires showing payment of rent to the plaintiff/appellant. Defendant also placed on record the House Tax Assessment register wherein the defendant was shown to be recorded as occupier from 196566 onwards. The licence of Padam Sain defendant No. 2 was for Meham, whereas that of Roop Narain was of Jind Cash memos also showed the shop to be run by Padam Sain. The learned trial Court also took note of the fact that there was no vote or ration card of Roop Narain at Meham. Therefore, the learned Court recorded a finding that it was defendant No. 2, who was tenant under the plaintiff for last 20 years.

8 On issue No. 4, the learned trial Court held, that in view of the finding that defendant No. 2 was the tenant under the plaintiff, the civil Court, did not have

jurisdiction to entertain and try the suit.

9 However, issue No. 5 was decided against the defendants and in favour of the plaintiff/appellant. Consequently, the suit was dismissed.

10 The findings of the learned trial Court were affirmed by the learned lower appellate Court.

11 Mr. J.L. Malhotra, learned counsel, appearing on behalf of the appellant, contends, that this appeal raises the following substantial question of law :

"Whether the finding of fact recorded by the learned Courts below is outcome of misreading of evidence and therefore, not sustainable in law ? "

12 In support of the substantial question of law, the learned counsel for the appellant vehemently contended, that the learned Courts below failed to notice, that by way of documentary evidence it was proved on record that it was Roop Narain, was indicted as tenant, who died in 1979. There was no proof of surrendering of tenancy or handing back of possession of the tenanted premises to the plaintiff/appellant, therefore, the learned Courts below committed an error by misreading the documentary and oral evidence to hold, that it was defendant No. 2 who was the tenant.

13 It was also the contention of the learned counsel for the appellant, that the learned Courts below have wrongly relied upon the municipal record against the settled law, that the municipal record, cannot prove the factum of tenancy, qua the tenanted premises.

14 The learned counsel for the appellant also contended that vahi entries, were not signed by the plaintiff/appellant, therefore, could not be used against him to record a finding. The findings of the learned Courts below being perverse and outcome of misreading of evidence, deserved to be set aside.

15 On consideration, I find no force in the contentions raised by the learned counsel for the appellant. The learned Courts nonsuited the plaintiff for the reason that he was unable to prove the receipt of rent from Roop Narain till the year 1979. The plaintiff did not produce any proof of receipt of rent. Defendant No. 1, who appeared in the witness box, had proved the fact that Roop Narain had shifted to Jind about 2022 years back. This fact also stood proved from the licence of tobacco sale granted to the parties, which showed that the licence granted to Roop Narain was of Jind whereas it was defendant No. 2, who had licence for sale of tobacco at Meham.

16 Though, the entries in the municipal record are not conclusive proof of tenancy, but it could be used as collateral circumstance, to see whether the stand of the plaintiff/appellant was proved or not. The entry of possession of defendant No. 2 was recorded in possession for last more that 22 years. He had further proved the payment of rent to the plaintiff/appellant.

17 The civil suits are decided on probabilities. The learned Courts below on

appreciation of evidence, specially the contradictions in the statements of witnesses examined by the plaintiff/appellant. Once the factum of tenancy was proved, the learned Courts below were right in holding that the civil Court, had no jurisdiction to entertain and try the suit.

18 The substantial question of law, therefore, is answered against the appellant. Finding no merit in the appeal, it is ordered to be dismissed, but with not order as to costs. Appeal dismissed