

(2014) 12 RAJ CK 0038

In the Rajasthan High Court

Case No : Civil Writ Petition No. 13533 of 2014

Shankar Lal Chaurasiya

APPELLANT

Vs

Mohan Lal

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 151
Constitution of India, 1950 — Article 227

Citation : (2015) 1 RCR(Rent) 255

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : D.K. Srivastava, Advocates for the Appellant

Judgement

Alok Sharma, J.—This petition under Article 227 of the Constitution of India impugns the judgment dated 26.09.2014, passed by the Appellate Rent Tribunal, Kota concurring with the Rent Tribunal's judgment dated 12.12.2012 dismissing the petitioner-landlord-applicant's (hereinafter "the applicant") eviction petition under Section 9(a) of the Rajasthan Rent Control Act, 2001 (hereinafter "the Act of 2001"). The applicant sought eviction of the respondent-non-applicant purportedly the tenant (hereinafter "the non-applicant") from the tenanted premises described in the petition. It was the case of the applicant that the non-applicant had been his tenant since June, 2003 @ Rs. 350/- pm, but in default on the payment of due rent since July, 2007 in spite of a registered notice as mandated under the proviso to Section 9(a) of the Act of 2001 sent on 01.04.2008 by the applicant's counsel. It was alleged that in the circumstances, the non-applicant being in default of payment of rent in terms of Section 9(a) of the Act of 2001, was liable to be evicted from the premises in issue. A certificate of possession in the circumstances was sought by the applicant. The applicant further alleged that without the applicant's permission, the non-applicant had obtained a water connection in the tenanted premises in his own name and thereby violated the agreed terms and conditions between the parties entitling the applicant to a decree of eviction also on that count. It is further alleged that

the non-applicant had obtained alternate accommodation adequate for his user elsewhere in Bapu Nagar Kacchi Basti, near Stone Mandi, Kota and on this count also in terms of Section 9(j) of the Act of 2001 the applicant was entitled to eviction of the non-applicant. It was further alleged that the non-applicant was prone to creating nuisance after getting inebriated following which he used to get into a fight with one Girraj Prasad Mehra, another tenant of the applicant in an adjoining premises, consequent to which the said Girraj Prasad Mehra had to vacate the tenanted premises resulting in loss of rent to the applicant. In the circumstances, it was prayed that a judgment of eviction be passed against the non-applicant and a certificate of possession in respect of the purportedly tenanted premises be issued in favour of the applicant.

2. Averments in the eviction petition were denied in the reply filed by the non-applicant. The case of the non-applicant was that the entire eviction petition was only a ruse to obtain possession of the property not in the ownership of the applicant and of which the non-applicant was not the landlord. It was asserted that the non-applicant himself had made construction of two rooms between 1192 and 1994 in a Kacchi Basti spread over Government land and had been living there since. It was submitted that in the survey of the Kota Municipal Corporation, the possession of the non-applicant over the house in issue in the eviction petition was established. It was submitted that the non-applicant had in fact obtained a water connection as allowed by the concerned department to those unauthorisedly occupying land in the Kacchi Basti spread over Government land.

3. The applicant examined himself in support of his claim as also one Girraj Prasad Mehra, his purported erstwhile tenant living in the vicinity of the premises in issue before the Rent Tribunal. Five documents were relied upon purporting to establish that the tenanted premises was in the ownership of the applicant. The non-applicant relied upon his own evidence and that of Jagdish, Badri Lal, Madan Lal and Satish Gupta in support of his defence to the eviction petition laid by the applicant.

4. On the basis of the pleading of the parties, the Rent Tribunal framed six issues. Issue No. 1 related to question as to whether the non-applicant was the tenant of the applicant on a rent of Rs. 350/- p.m. since June, 2003 and was in default on payment of the rent commencing June, 2007. The second issue was as to whether in spite of statutory notice detailing the bank account and demand for arrears of rent for over four months, the non-applicant had failed to deposit the said amount and thus having defaulted on the payment of rent in terms of Section 9(a) of the Act of 2001 and liable to be evicted from the property in issue. The third issue related to consequence of the alleged breach of the purported tenancy agreement between the applicant and the non-applicant, by the non-applicant obtaining a water connection in his own name in the premises in issue. The fourth issue was as to whether the non-applicant having got alternate accommodation for himself adequate for his requirement was liable to

be evicted from the premises in issue under Section 9(j) of the Act of 2001. The fifth issue which the Rent Tribunal deemed fit to frame was as to whether the non-applicant by getting into altercation and quarrels with the another tenant of the applicant, one Girraj Prasad Mehra had created nuisance on which ground he was also entitled to be evicted from the purportedly tenanted premises. The six issue was as to what relief, if any, the applicant was entitled to.

5. The Rent Tribunal having considered the pleadings and evidence of the parties found that the applicant had failed to establish his ownership over the premises in issue which was admittedly situated in Kacchi Basti over Government land. It was also found that the applicant had not been able to establish that he was ever in possession of the premises/house in issue or that he had obtained electricity or water connection in his own name in the premises in dispute. No proof of the applicant ever renting out the premises in issue to the non-applicant was also found. Hence no landlord-tenant relationship was made out. The Rent Tribunal further found that in fact the documents relied upon by the applicant with regard to his purported title over the said house i.e. Exhibit-4 an agreement to sell with one Latoor and Exhibit-5 a purported power of attorney executed by the said Latoor for whatever their worthy were not admissible in evidence not being registered in spite of relating to a property over Rs. 100 in value. The Rent Tribunal also found that the description of the property in Exhibits-4 & 5 relied upon by the applicant did not match with the description of the property under considered in the eviction petition. The Rent Tribunal thus held that the applicant had not been able to establish his title over the premises in dispute or for that matter landlord-tenant relationship between himself and the non-applicant, in the circumstances, the grounds formulated by the applicant in support of his eviction petition were irrelevant and the eviction petition liable to be dismissed. An appeal by the applicant before the Appellate Rent Tribunal under Section 19(6) of the Act of 2001 also failed as the Appellate Rent Tribunal found no plausible ground to interfere with the well considered judgment of the Rent Tribunal dismissing the eviction petition.

6. Mr. D.K. Srivastava, appearing for the applicant has submitted that the judgment dated 26.09.2014, passed by the Appellate Rent Tribunal is liable to be set aside as the Appellate Rent Tribunal did not appreciate the additional documents filed along with the application under Order 41 Rule 27 CPC which inter alia related to proof of payment of rent for the premises in issue by the non-applicant to the applicant. Aside of the above, the counsel for the applicant has submitted that the findings of the Rent Tribunal and the Appellate Rent Tribunal on the lack of evidence to establish landlord-tenant relationship between the applicant and the non-applicant are perverse. It has been further submitted that the judgments impugned are vitiated for their failure to address the other four issues framed.

7. Heard. Considered.

8. A perusal of the judgment dated 26.09.2014, passed by the Appellate Rent

Tribunal indicates that the application under Order 41 Rule 27 read with Section 151 CPC filed by the applicant was considered in detail. The case sought to be set up before the Appellate Rent Tribunal in appeal was inter alia on the basis of rent having been sent by the non-applicant to the applicant by money orders. This was found by the Appellate Rent Tribunal incredible of belief inasmuch as such a case had not been averred in the eviction petition i.e. that the rent has been received by the applicant from the non-applicant by way of money-orders. The Appellate Rent Tribunal further noted that the receipts of money-orders filed with the application under Order 41 Rule 27 CPC suffered from overwriting and further entries thereon appeared to have been made subsequent to the placing of the seals of the postal department thereon. The Appellate Rent Tribunal also noted the discrepancy between monthly rent set up by the applicant in his eviction petition @ Rs. 350/- p.m. on the one hand with the amount of Rs. 300/- p.m. as rent being purportedly remitted by the non-applicant to the applicant through money orders. In the circumstances, the Appellate Rent Tribunal took the view that the application under Order 41 Rule 27 CPC was without merit and did not fulfill the requirement of law for the additional evidence to be taken on record in deciding an appeal. Consequently, it was held that no ground for consideration of the additional evidence with the application under Order 41 Rule 27 CPC filed by the applicant before the Appellate Rent Tribunal was made out. To my mind the reasoning of the Appellate Rent Tribunal rejecting the application under Order 41 Rule 27 CPC is unexceptional.

9. As far as the merits of the case are concerned, I am of the considered view that the finding of the Rent Tribunal as concurred to by the Appellate Rent Tribunal on the question of the applicant having failed to establish landlord-tenant relationship between himself and the non-applicant is a finding of fact. The Tribunals below have taken into consideration the fact that the tenanted premises in issue were admittedly situated in a Kacchi Basti over Government land, the applicant had no title thereof. The applicant was not able to establish his possession of the premises in question at any point of time having neither the electricity nor the water connection standing in his own name. The Tribunals below also found that aside of the lack of any writing with regard to the landlord-tenant relationship between the applicant and the non-applicant, no receipt of rent by the applicant from the non-applicant was proved on the evidence laid. In these circumstances, considering the overall evidence on record, the Tribunals below have rightly concluded that the landlord-tenant relationship between the applicant and the non-applicant was not established consequent to which the eviction petition as laid by the applicant under Section 9(a) of the Act of 2001 was wholly misdirected. It is trite that this Court exercising jurisdiction under Article 227 of the Constitution of India is loath to interfere with the findings of fact. More so when they are well considered and based on cogent evidence before the Tribunal/court below. In my considered opinion, the findings of the Rent Tribunal and the Appellate Rent Tribunal cannot be by any stretch of imagination said to be perverse or vitiated by any misdirection in law. In fact

from the evidence on record, the conclusion of the Tribunals below was only conclusion which could have been arrived at.

10. There is no force in the petition. This petition has been recklessly filed without any ground therefor being even remotely made out. The supervisory jurisdiction of this Court cannot be invoked on "take a chance" approach. This callousness entails an unwarranted burden on this Court and huge arrears which are a matter of public comment uninformed by the easy access to this Court being misused by all the sundry. Dismissed with cost of Rs. 10,000/- to be paid by the applicant to the Rajasthan State Legal Services Authority within six months from today. In the event of the non-payment as directed, the Dy. Registrar (Judicial) of this Court should issue a certificate to the jurisdictional Collector for recovery of cost of arrears of land revenue.