
(1997) 12 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1986 of 1997

Sardar Singh

APPELLANT

Vs

Smt. Champa

RESPONDENT

Date of Decision: Dec. 3, 1997

Citation: (1998) 118 PLR 497 : (1998) 1 RCR(Rent) 205

Hon'ble Judges: V.K. Bali, J

Bench: Single Bench

Advocate: O.P. Goyal and Rajesh Sharma, for the Appellant; Ashok Aggarwal and Jaswant Jain, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Bali, J.

This appeal is directed against the judgments of concurrence whereby suit of the plaintiff for possession was decreed.

2. Plaintiff instituted a suit for possession of the demised premises having two shops and a boundary wall primarily on the ground that demised building was not covered under the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 as-construction of the same" had not completed ten years and prior thereto a notice u/s 106 of the Transfer of Property Act was given to the appellant-tenant to vacate the same. On the crucial issue as to whether the Rent Act applies or not, the learned trial Court thread-bare discussed the oral and documentary evidence and came to a firm conclusion (that the provisions of the Rent Act were not applicable. Consequently, an order of ejectment was passed against the appellant. Aggrieved, appellant preferred an appeal which came up for final disposal before the learned Addl. Distt. Judge, Narnaul and the same was dismissed. It is against this judgment of concurrence that the present appeal has been filed.

3. When the matter came up for motion hearing, learned counsel for the appellant made following statement:-

"Counsel for the appellant, inter-alia, submits that the appellant had moved two applications for examining additional evidence before the learned first appellate Court but as per orders passed on those applications, these applications were to be disposed of along with the appeal but the said applications have not been disposed of by the appellate Court while disposing of the appeal".

After recording statement aforesaid, notice of motion was issued for August 27, 1997 and dispossession of the appellant was stayed.

4. Pursuant to notice issued by this Court, Mr. Ashok Aggarwal, learned Senior Advocate, has put in appearance on behalf of the plaintiff/respondent and, on the basis of documents, submits that the statement of the counsel for the appellant, mentioned above, is not correct. He states that as matter of fact only one application for additional evidence was moved and the same was disposed of by a speaking order dated May 27, 1997. He has also shown to this Court a certificate from the Copying Agency wherein it is mentioned that in this case only one application for additional evidence was moved. All that the Court requires to say is that the learned counsel for the appellant was not properly briefed and leaves the matter at that.

5. Mr. Goel, learned counsel for the appellant contends that both the Courts below have clearly erred while holding that the provisions of the Rent Act were not applicable to the facts of this case, as it is proved on records of the case that vide earlier rent note dated January 10, 1979, two Kacha rooms with boundary wall were rented out to the appellant and that being so, it was a case of continuation of tenancy even if the later rent note dated December 23, 1983 had come into existence. It may be mentioned that positive case of the plaintiff/respondent has been throughout that initially a vacant piece of land with a boundary wall was rented out I find no merit whatsoever in the contention of the learned counsel for the appellant. Even if it is assumed for the sake of argument that two kacha rooms and boundary wall were rented out to the appellant on January 10, 1979, the Courts below have returned firm finding of fact that even if it was a case of two Kacha rooms having been rented out to the appellant, the same were totally demolished and new building in the shape of a Hotel came into existence. A Division Bench of this Court in *Sadhu Singh v. District Board Gurdaspur and Anr.* (1962) 64 PLR 1, held that "construction and reconstruction" are interchangeable terms and the only difference is that the phrase "construction" will be used where a new building is put up where none existed before but reconstruction will apply to a building which is rebuilt in place of an existing building, in both the cases there would be construction and the notification exempting buildings constructed during a particular period would apply. Additions, improvements or alterations may amount to construction, yet it can not be said with any reasonableness that they would amount to construction of a building. When a part of the building is taken as a building for purposes of the Act any partial construction in such part would not be a construction of the building but where the entire part is pulled down and rebuilt, it would certainly be construction and would fall within the ambit of the notification". I am in complete agreement with the observations made by the Division

Bench in Sadhu Singh"s case (supra).

6. The second contention of Mr. Goel is that no evidence has been produced on records of the case from where it could be proved that the building was constructed in the year 1983. There is no merit in this contention of the learned counsel as well. The defendant appeared as his own witness and admitted the correctness of the rent notes, Ex.P1 and P4. He also stated that he did not know as to whether in the said agreement it was mentioned or not that there were two kacha rooms. He also stated that he had not paid rent up to 10.9.1983 @ Rs. 500/- per month and w.e.f. 1.1.1994 he had paid rent @ 900/- per month. He further admitted that receipts regarding payment of rent from 11.9.1983 to 31.12.1983 were not with him. He further admitted that on the site at present there was a pucca building of hotel having two doors. The positive Case of the plaintiff-respondent has been that it is in this interregnums period of three months, when the appellant was not in occupation of the building and was not paying rent, that the pucca building, i.e., hotel was constructed. It requires to be mentioned here that the parties are ad-idem that there were two rent notes executed between the parties, one on January 10 1979 and the other on December 23, 1983. Concededly, there are no rent receipts for the interregnum period, i.e. from September 11, 1983 to December 31, 1983; It clearly clinches the issue that pucca hotel was constructed during this period.

7. No merits. Dismissed with costs quantified at Rs. 5000/-.