(2009) 03 P&H CK 0102

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Madalsa	APPELLANT
Vs	
Madan Lal	RESPONDENT

Date of Decision: March 25, 2009

Acts Referred:

- Transfer of Property Act, 1882 - Section 106

Citation: (2009) 156 PLR 159

Hon'ble Judges: Vinod K.Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vinod K. Sharma, J.
This regular second appeal is directed against the judgment and decree dated 9.12.2008 passed by the learned Courts below. The learned trial Court dismissed the suit filed by the plaintiff/appellant for possession, however, the learned lower appellate Court modified the judgment and decree of the learned trial Court and partly decreed the suit for recovery of arrears of rent.

2. The plaintiff/landlord brought a suit for possession on the plea that the tenancy of the defendant/respondent stood terminated by way of legal notice and also for the arrears of rent along with future mesne profit.

3. The learned trial Court on appreciation of evidence, recorded a finding of fact that the plaintiff/appellant had failed to prove that the building was new and constructed within a period of ten years of filing of the suit. The learned trial Court dismissed the suit.

4. The plaintiff/appellant preferred an appeal. The learned lower appellate Court affirmed the findings recorded by the learned trial Court holding that the property was not proved to have been constructed Within ten years and, therefore, suit for possession was not competent as provisions of the Rent Act were applicable to the property in dispute.

5. However, the learned lower appellate Court held that the plaintiff was entitled to decree for recovery of rent of three years and accordingly decreed the suit for recovery of rent for said period.

6. The learned Counsel appearing on behalf of the appellant contends that this appeal raises the following substantial questions of law for consideration by this Court:

1. Whether the judgment and decree passed by the learned Courts below are outcome of misreading of documents Ex.P-1 to Ex.P-9 and Mark A thus perverse?

2. Whether the learned Courts below were justified in not granting decree of mesne profit though it was admitted case that the rent was not paid by the defendant/respondent?

7. In support of the substantial questions of law the learned Counsel for the appellant contends that the plaintiff/appellant while appearing as her own witness had made, a statement that prior to inducting the defendant/respondent as tenant, the property in dispute was under the tenancy of Jai Parkash who vacated the same on 31.7.1990. The property was thereafter rented out to the defendant/respondent in January, 1991. It was the case of the appellant that because of certain dispute with the previous tenant a suit for recovery was filed which was decreed in April, 1996, the judgment was duly exhibited as Ex.P9.

8. It is also the contention of the learned Counsel for the appellant that the plaintiff examined official from the Department to prove that the plan for construction was sanctioned in the year 1987, and also that in the assessment register Jai Parkash, the previous tenant was shown to be tenant over the disputed property, thus, the learned Counsel for the appellant contends that it was amply proved on record that the building was constructed in the year 1988 and the suit having been filed in the year 1997 i.e. within ten years was maintainable. It is contended that the findings recorded by the learned Courts below are therefore outcome of misreading of evidence, documentary and oral, brought on record.

9. It is also the contention that the judgment and decree of the learned Courts below are perverse.

10. The learned Counsel for the appellant also contends that once it was proved on record that the tenant had not paid the rent then the learned Courts were bound to have granted a decree of mesne profit also for the future period.

11. On consideration of the matter, I find no force in the contentions raised by the learned Counsel for the appellant. The learned Courts below on appreciation of evidence have recorded a concurrent finding of fact that the plaintiff/appellant has failed to connect the property in dispute with the alleged sanctioned plan, which was for residential house and not for the building in dispute.

12. The learned Courts below have also recorded a finding of fact that plaintiff has failed to connected the property with the sanctioned plan. Furthermore she failed to place on record the completion certificate to show the date of completion of construction. The finding of fact, has been recorded on appreciation of evidence and this Court can not reappreciate the evidence to record a finding different from the one recorded by the learned Courts below unless the findings are outcome of misreading of evidence or perverse.

13. The contentions raised by the learned Counsel for the appellant cannot be accepted to hold that the judgment and decree passed by the learned Courts below are out-come of misreading of evidence documentary and oral as view taken can not be faulted with.

14. The second contention of the learned Counsel for the appellant cannot be accepted, as in the civil suit the Court can decree, the suit for amount claimed and could not decree the suit for subsequent claim. It was open to the plaintiff/appellant to have filed a suit for mesne profit/recovery of rent for further period. The suit for possession was not competent as admittedly the defendant/respondent was tenant over the property in dispute and it was held that the provisions of the Rent Act were applicable therefore the tenancy could not be terminated by notice u/s 106 of the Transfer of Property Act. The learned lower appellate Court thus rightly decreed the suit for recovery of rent for three years.

15. In view of the above, the substantial questions of law are answered against the appellant.

No merit. Dismissed.