

(2010) 11 P&H CK 0395

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2004 of 2010 (O and M)

Gurdev Kaur alias Rani

APPELLANT

Vs

Dr. Sanjiv Garg and Another

RESPONDENT

Date of Decision: Nov. 17, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 12(1), Order 20 Rule 12(2)

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Defendant-Gurdev Kaur, having lost in both the Courts below, is in second appeal.

2. Respondents/Plaintiffs filed suit against the Defendant-Appellant alleging that Plaintiffs' mother was owner of the suit property. On her death, Plaintiffs and their father inherited it. Plaintiffs' father had also since died and now Plaintiffs are owners of the suit property. Defendant was tenant in the suit property under the Plaintiffs. Rate of rent was Rs. 500/-per month. The Defendant failed to pay rent and, therefore, earlier suit for recovery of rent filed by the Plaintiffs was decreed. Defendant's tenancy has been terminated. The Defendant has not paid charges for use and occupation of the suit property since 01.01.2005 till 31.07.2007 amounting to Rs. 15,500/-. Accordingly the Plaintiffs sought ejectment of the Defendant from the demised property and also claimed recovery of Rs. 15,500/-as damages for use and occupation thereof.

3. The Defendant admitted that she is tenant in the suit property. She also admitted that earlier suit filed by Plaintiffs for recovery of rent stands decreed. The Defendant, however, pleaded that the Plaintiffs themselves stopped receiving rent to harass the Defendant. The Defendant also alleged that she had spent Rs. 10,000/-on obtaining connections of water, electricity and sewerage and she is

entitled to adjust the same. Various other pleas were also raised.

4. Learned Civil Judge (Senior Division), Patiala vide judgment and decreed dated 10.02.2009 decreed the Plaintiffs' suit for ejectment of Defendant from demised premises and also directed the Defendant to pay Rs. 500/-per month as rent with effect from 01.01.2005 along with simple interest at the rate of 6% per annum till realisation. First appeal preferred by the Defendant stands dismissed by learned Additional District Judge, Patiala vide judgment and decree dated 24.09.2009. Feeling aggrieved, the Defendant has preferred the instant second appeal.

5. I have heard learned Counsel for the Appellant and perused the case file.

6. Learned Counsel for the Appellant contended that the suit was filed on 31.05.2007, but the Plaintiffs claimed damages for use and occupation till 31.07.2007. It was also contended that the Plaintiffs prayed for recovery of Rs. 15,500/-only as damages for use and occupation till 31.07.2007, but the Courts below have granted recovery of rent from the Defendant with effect from 01.01.2005 onwards i.e even since after 31.07.2007, although the same was not claimed by the Plaintiffs.

7. I have carefully considered the aforesaid contentions, but RSA No. 2004 of 2010 (O & M) -3 find no merit therein. It is not even the case of the Defendant that she has paid rent or mesne profits since 01.01.2005 onwards. On the other hand, the said amount has been found to be due from the Defendant to the Plaintiffs. Earlier also, Plaintiffs' suit for recovery of rent for the preceding period was decreed. The Plaintiffs have claimed use and occupation charges upto 31.07.2007, although the same could be claimed for pre suit period upto 31.05.2007. However, at the same time, the Plaintiffs could claim rent or mesne profits since the date of filing of suit till vacation of the demised property as well. Under Order 20 Rule 12 (1)(c) read with Rule 12(2) of the Code of Civil Procedure, recovery of rent or mesne profits from the date of institution of the suit till vacation of the demised property can also be ordered and decreed by the Court. In the instant case, the Plaintiffs are consequently entitled to mesne profits even since after the institution of the suit till delivery of possession of the suit property to the Plaintiffs. Consequently, decrees passed by the Courts below cannot be said to be illegal in anymanner.

8. Both the Courts below have arrived at concurrent finding against the Defendant-Appellant on appreciation of evidence. The said finding is supported by cogent reasons and cannot be said to be perverse or illegal in any manner so as to warrant interference in second appeal. No question of law, much less substantial question of law, arises for determination in the instant second appeal. The appeal is completely devoid of any merit and is accordingly dismissed in limine.