

(1999) 09 P&H CK 0183

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2544 of 1999

P.C. Kaul

APPELLANT

Vs

Krishna Wati

RESPONDENT

Date of Decision: Sept. 8, 1999

Acts Referred:

- Evidence Act, 1872 - Section 116
- Transfer of Property Act, 1882 - Section 106

Citation: (2001) 1 CivCC 635 : (2002) 1 CivCC 108 : (2001) 4 RCR(Civil) 383 : (2000) 1 RCR(Rent) 441

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: D.V. Sharma, for the Appellant; Chetan Mittal, for the Respondent

Final Decision: Dismissed

Judgement

R.L. Anand, J.

This is defendants appeal and has been directed against the judgment and decree dated 17.4.1999 passed by Addl. District Judge, Chandigarh, who affirmed the judgment and decree dated 14.5.1998 passed by Senior Sub Judge, Chandigarh, who granted a decree for possession in favour of Smt. Krishna Wati against the present appellants pertaining to the basement, front hall over the basement on the ground floor and open space 6"x10" of 28/1 Industrial Area, Phase-II Chandigarh, fully described in the head note of the plaint.

2. Two fold contentions were raised by the learned counsel for the appellants. First that Smt. Krishna Wati had no locus standi to file the suit for possession against the appellants because she had not become (he full fledged owner. I am not in a position to subscribe to the argument raised by the learned counsel for the appellants for one valid reason. The other which has been adopted by the trial Court may not be as sound as it looks to be. Admittedly, no sale deed was executed in

favour of smt. Krishna Wati. She had paid the entire consideration to her vendor and got the possession of the property which was agreed to be sold to her. It is a basic law that agreement of sale does not create any right, title or interest in the vendee. Even if she had given the entire sale consideration to her vendor, the fact is that her title was not complete so long a regular sale-deed is not executed in her favour. The argument if the learned counsel for the appellants stands repelled for the reason that the client of Mr. Sharma had attorned in favour of Smt. Krishna Wati and in view of the bar created u/s 116 of the Indian Evidence Act, the appellants could not challenge the title of respondent without surrendering the possession to the respondent. On the strength of her attornment Smt. Krishna Wati had the locus standi to file the suit for possession and as such the frame of the suit is correct. If any support is required, it can be derived from [Bokka Sreeramulu Vs. Kalipatnapu Venkateswar Rao and Another,](#), where it was held as follows :-

"The Section embodies the principles of estoppel arising from the contract of tenancy. It is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some inequitable situation taking under advantage of the possession that he got any probable defect in the title of his landlord. Of course he can deny his title after he gives up the possession having thus restored status quo ante.

"All that is necessary for the application of the above principle is that there was a contract of tenancy and that the tenant took possession of the land under the title or with the permission of the landlord or the person then in possession. Possession and permission being established estoppel would bind the tenant during the continuance of the tenancy and until he does not surrender his possession.

Evidently both the landlord and the persons in possession at the time of the contract are without the protection of the provisions. A person in possession within the meaning of the section need not be a full owner : he be a mortgagee, lessee or any other person having right to or is in actual possession. However defective the title of such a person or even the landlord may be at the time of the creation of the tenancy, the person inducted under the term of the contract cannot be permitted to rely on that defect to his advantage or to perpetuate his possession or to act in detriment to the landlord's right.

In law even assuming that a third party has title to any extent in the suit property, where the contract is one entered into between the plaintiff and the defendant and actual possession was given by the plaintiff to the defendant in his own right, the plaintiff and not the third party must be regarded as the landlord of the defendant for the purpose of Section 116. Hence the defendant's plea that the plaintiff must be regarded as a benamidar for the third party and payment to the third party should operate as discharge of his liability cannot succeed. In the absence of any foundation therefore it is also not possible to hold that such payment discharges the

liability of the defendant on the assumption that the plaintiff is the agent of the third party. Such an assumption would also be inconsistent with the rule of estoppel laid down in Section 116.

The bar of estoppel under the Section continues until the tenant actually goes out of occupation by handing over possession. The protection given to the landlord does not come to end by reason of his having a registered notice to quit."

3. The second submission raised by Mr. Sharma is that when the Transfer of Property Act was enacted, its provisions were not made applicable to the four States including the States of Punjab and with the carving of the Union Territory, Chandigarh, which did not remain part of the Punjab, the provisions of Transfer of Property Act would be applicable because the Transfer of Property Act is a central Legislation. In this view of the matter the notice terminating the tenancy of the appellants is not valid and the suit could not be decreed. In support of his contention, the learned counsel for the appellants cites [Dattopant Gopalvarao Devakate Vs. Vithalrao Maruthirao Janagaval](#) .

4. I do not subscribe to the argument raised by the learned counsel for the appellants. It is not proved on the record that after the carving of Union Territory, Chandigarh there was any notification either issued by the State Government or by the Union Territory through which it has been stated that the provisions of Transfer of Property Act would be applicable to Union Territory, Chandigarh. By implication we cannot stretch the operation of Transfer of Property Act to the Union Territory, Chandigarh. If this part of the argument of the learned counsel for the appellants is rejected, then the general principles of Transfer of Property Act as applicable to the State of Punjab can be made applicable independently. Notice in this case was admittedly given to the defendants-appellants before filing of the suit. The deference of one day here or there will not make much difference in this case. The defendants were given six-months time in this case to vacate the demised premises. Through the notice the tenancy of the defendants was terminated. Both the Courts below had rightly dealt with this issue. No merit, Dismissed.

5. Appeal dismissed.