

(2011) 07 P&H CK 0213

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 879 of 1987

Nathan Lal

APPELLANT

Vs

Ved Parkash and Others

RESPONDENT

Date of Decision: July 12, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.

Tersenessly, the facts, which need a necessary mention for the limited purpose of deciding the core controversy, involved in the instant appeal and emanating from the record, are that Ved Parkash and others, successors of Jag Ram Respondent Nos. 1 to 5-Plaintiffs (for brevity "the Plaintiffs") filed the suit against Nathan Lal son of Des Raj Appellant-Defendant No. 1 and Om Parkash son of Bharat Singh proforma-Respondent No. 6-Defendant No. 2 (for short "the Defendants") seeking a decree for ejection in respect of the house in dispute and recovery of the amount of rent of Rs. 3200/-, inter-alia pleading that they were the owners and the Defendants were the tenants in it. The Defendants did not pay the amount of rent and Plaintiffs did not want to keep them as their tenants. They (Plaintiffs) terminated their tenancy on 8.9.1981 by issuance of notice and after termination of tenancy, their possession was that of trespasser. On the basis of aforesaid allegations, the Plaintiffs sought the ejection of the Defendants and recovery of the impugned amount as arrears of rent in the manner described hereinabove.

2. The Defendants contested the suit and filed their respective written statements. Defendant No. 1 has pleaded in his written statement that as he had never been residing in the house in dispute as a tenant, therefore, the question of payment of any rent did not arise. However, Defendant No. 2 filed his separate written

statement, inter-alia pleading certain preliminary objections of, maintainability of the suit; mis-joinder and non-joinder of parties, cause of action and locus standi of the Plaintiffs. They have denied the relationship of landlord and tenant between the parties. However, it was claimed that the Defendants paid the rent up to 31.5.1981, but Plaintiff No. 3 did not issue any receipt in this respect. It will not be out of place to mention here that the Defendants have stoutly denied all other allegations contained in the plaint and prayed for dismissal of the suit.

3. Controverting the allegations of the written statements and reiterating the pleadings contained in the plaint, the Plaintiffs filed the replications.

4. In the wake of pleadings of the parties, the trial Court framed the following issues for adjudication:

1 Whether the Plaintiffs are the owners of the suit property? OPP

2 Whether the Defendant No. 1 Nathan Lal took the house in dispute on rent from the Plaintiff from 1.1.1978?

3 Whether Defendant No. 1 has wrongly delivered the possession of the house in dispute to Defendant No. 2 Om Parkash and as such the Defendant No. 2 is liable to be ejected?

4 Whether the suit is bad for mis-joinder and non-joinder of necessary parties?

5 Whether Defendant No. 2 took the house in dispute on rent from Plaintiff No. 3 Smt. Parkash Wati?

6 Whether the relationship of landlord and tenant does not exist between the Plaintiffs Nos. 1,2,4,5 and Defendant No. 2?

7 Whether the Defendant No. 2 has paid the rent to Plaintiff No. 3 up to 31.5.1981?

8 Relief.

5. In order to substantiate their respective pleaded stands, the parties to the suit, produced on record the oral as well as documentary evidence.

6. The trial Court, after taking into consideration the entire evidence on record and in view of findings on various issues, decreed the suit of the Plaintiffs, by virtue of impugned judgment and decree dated 20.7.1984.

7. Although Defendant No. 2 Om Parkash did not challenge, however, aggrieved by the ejection order and decree of the trial Court, Defendant No. 1 Nathan Lal filed the appeal, which was dismissed with costs as well, by the Ist Appellate Court, by way of impugned judgment and decree dated 18.9.1985.

8. The Appellant-Defendant No. 1 still did not feel satisfied with the impugned judgments and the decrees of the Courts below and preferred the present appeal. That is how I am seized of the matter.

9. Having heard the learned Counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the present appeal in this context.

10. As is evident from the record that ownership of the Plaintiffs over the house in dispute is not disputed by the Defendants. The Defendants have taken a contradictory stand. At the first instance, they have pleaded that there is no relationship of landlord and tenant between the parties. On the contrary, they have alleged that they have already paid the rent up to 31.5.1981, but Plaintiff No. 3 did not issue any receipt in this regard.

11. Having completed all the codal formalities and on ultimate analysis of the evidence on record, the trial Court recorded a finding of fact in its impugned judgment dated 20.7.1984, which, in substance, is (paras 10 & 11) as under:

For the reasons given above, it is held that the house in dispute was given on rent by Plaintiffs to Defendant No. 1. As far as delivery of possession by Defendant No. 1 to Defendant No. 2 of the house in dispute is concerned, it is admitted case of parties that Om Parkash, Defendant No. 2 is running the business in the house in dispute. Rather it is proved when Om Parkash as DW1 has deposed that he had installed a chakki in the house in dispute. A partnership deed Ex.PX entered into between Defendant No. 1 and Defendant No. 2 also speaks that both the Defendants are running the business in the house in dispute. In para No. 6 of this partnership deed, both the parties agreed that the second party i.e. Nathan shall be entitled to the premises of business at the time of dissolution of the firm without any reservation. This fact also shows itself that the premises were let out to Defendant No. 1 who later on made Defendant No. 2 as his partner is running the business.

For the reasons given above, it is proved that Defendant No. 1 illegally joined Defendant No. 2 and also delivered the possession of the house in dispute to Defendant No. 2 of which he had no right. Accordingly, these issues are decided in favour of Plaintiffs and against Defendants.

12. Not only that, the judgment of the trial Court was upheld by the first appellate Court, by virtue of impugned judgment dated 18.9.1985. Meaning thereby, the Courts below have taken into consideration and appreciated the entire relevant evidence brought on record by the parties in the right perspective. Having scanned the admissible evidence in relation to the pleadings of the parties, the trial Court as well as the first Appellate Court has recorded the concurrent findings of fact that the Plaintiffs are owners of the house in question and Defendants were in occupation as tenants. Such pure concurrent findings of fact based on the appraisal of evidence, cannot possibly be interfered with by this Court, while exercising the powers conferred u/s 100 of the Code of Civil Procedure, unless and until, the same are illegal and perverse. No such patent illegality or legal infirmity has been pointed out

by the learned Counsel for the Appellant, so as to take a contrary view, than that of well reasoned decision already arrived at by the Courts below, in this respect.

13. No other meaningful argument has been raised by the learned Counsel for the Appellant to assail the findings of the Courts below in this regard. All other arguments, relatable to the appreciation of evidence, now sought to be urged on behalf of the Appellant, in this relevant direction, have already been duly considered and dealt with by the Courts below.

14. In this manner, the entire matter revolves around the re-appreciation and re-appraisal of the evidence on record, which is not legally permissible and is beyond the scope of second appeal. Since no question of law, much less substantial, is involved, so, no interference is warranted, in the impugned judgments/decrees of the Courts below, in view of the law laid down by Hon"ble Apex Court in case [Kashmir Singh Vs. Harnam Singh and Another](#), in the obtaining circumstances of the present case.

15. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

16. In the light of aforementioned reasons, as there is no merit, therefore, the instant appeal is hereby dismissed as such.