

Rajesh Kumar Vs Christian Medical College, Ludhiana and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 18, 2009

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Advocate: R.P. Kansal, for the Appellant;

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

The challenge in the present revision is to the order passed by learned trial court on 14.11.2008 and order passed by the first appellate court on 03.10.2009, whereby an application filed by the petitioner for grant of ad-interim injunction was dismissed.

2. The plaintiff-petitioner filed a suit of permanent injunction for restraining the defendants from interfering in his peaceful possession of one shop

situated near Gate No.3 of the campus of the defendant Christian Medical College. It is the case of the petitioner that he was a tenant in the shop

in pursuance of a oral tenancy. Subsequently the Memorandum of Terms of Lease was reduced into writing on 06.01.2001. In terms of the

conditions of lease, the petitioner is a tenant and, therefore, he cannot be dispossessed from the shop in dispute, except in terms of proceedings

initiated under the East Punjab Urban Rent Restriction Act, 1949 (for short "the Act") and on the grounds available to the defendants under the

aforesaid Act.

3. The defendants on the other hand took up a stand that the plaintiff is a licensee and such licence stands terminated with effect from 30.09.2008.

It was also averred that memorandum of terms of lease produced by the plaintiff shows that his possession was that of a licensee and not as a

tenant.

4. Both the courts have returned a finding that the possession of the plaintiff was that of a licensee. Reliance is placed upon clauses 9, 11 and 14 of

the terms of memorandum wherein the property has been given to the plaintiff for running of a Provisional Store for the benefit of the employees of

the defendant. The licence fee was to increase 10% of every year and in case of requirement, the plaintiff had to accept alternative site which may

or may not be of the same dimensions.

Learned counsel for the petitioner has relied upon a Supreme Court judgment reported as Chandy Varghese & Ors. v. K.Abdul Khader & Ors.

2004 (1) ACJ 298 (S.C.). and of Delhi High Court reported as Kedari Singh v. Delhi Cloth and General Mills Co. Ltd., 1997(1) CCC 538 (Del)

: 1997(1) RCR 587 to contend that whether such document creates licence or lease, the test of determining the nature of possession, is that the

substance of the document must be preferred to the form. Real test is the intention of the parties whether they intended to create a lease or a

licence. If the document creates interest in the property, it is a lease, but, if it only permits another to make use of the property, of which the legal

possession continues with the owner, it is licence and if under the document a party gets exclusive possession of the property, prima facie, he is

considered to be a tenant but circumstances may be established which negatives the intention to create a lease. Relying upon the aforesaid

judgments, it is contended that since the plaintiff was in the exclusive possession of the shop and that he opens and locks up the shop, therefore,

the possession of the plaintiff is that of a tenant alone.

6. There is no dispute with regard to the proposition laid down in the judgments referred to by the petitioner. Infact the primary test to be taken

into consideration is whether a document is a licence or lease, is that the substance of the document must be preferred to the form. As per the

petitioner, the document or the lease was oral and subsequently the memorandum of terms has been reduced into writing. A perusal of the

document Annexure P-3 shows that the word licence and lease has been used loosely and inter-changeable. Clause-1 recites that the monthly

licence fee shall be Rs.2000/- for a period of five years and this can be renewed if desired by the party of the first part. The purpose of lease was

said to be a running of a grocery and allied needs provision shop only. Clauses-9 and 14 of the memorandum of terms of lease which are material,

read as under:

9. That the party of the second part will abide by all Rules and Regulations laid by CMC Ludhiana for running a provision store for the benefit of

their employees, a copy of which has been received by the party of the second part.

14. The party of the second party agreed to accept another alternative premises, should there be a need by the party of the first part to use the

property of the demised premises for construction of another building. The party of the second party agreed to accept and alternative site which

may or may not be of the same dimensions as the demised premises.

7. The respondent is a medical college having large number of employees. Therefore, giving a shop to the plaintiff for the benefit of his employees

does not create any interest in the property. The plaintiff was given right to use the shop for the benefit of the employees of the respondents. No

interest is created by any such document which is evident from Clauses-9 and 14 reproduced above. Therefore, even if the plaintiff was putting his

lock at the shop in dispute, it will not amount to creation of lease as the intention of the parties, nature of the property and the purpose of induction

of the plaintiff show creation of licence alone. In view of the above, I do not find any patent illegality or irregularity in the orders passed by the

learned trial Court and first appellate court, which may warrant interference by this Court in the present revision petition. Dismissed.