

Parmod Kumar v. Pawan Kumar (2023-4)212 PLR 355, PLRonline 466682

PUNJAB AND HARYANA HIGH COURT

Before: Justice Karamjit Singh, J.

PARMOD KUMAR – Appellant

versus

PAWAN KUMAR and another – Respondents.

RSA-909 of 2022

Transfer of Property Act, 1882 (4 of 1882), Section 106 — Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973), Section 1, 13 - Eviction - At the time of filing the suit, provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 were not applicable to the suit property - A simple tenancy can be terminated by service of notice under Section 106 of Transfer of Property Act - Once a valid notice under Section 106 is served, possession of tenant over the property becomes illegal and unlawful - Trial Court rightly decreed the suit . [Para 16]

Mr. Balkar Singh, for the appellant. Mr. J.K. Goel, for the respondents.

Karamjit Singh, J. - (12.07.2023) - By way of present appeal, the appellant/defendant has laid challenge to the judgments and decrees dated 16.2.2017 and 21.3.2022 passed by the Courts below whereby the suit for possession and to pay arrears of rent and mesne profits along with interest filed by respondents No.1 and 2 has been decreed.

2. Brief facts of the case are that respondents No.1 and 2 are owners of shop in dispute bearing No.6, Old No.209-A situated in Bakala Market, Sadhaura, Tehsil and District Yamuna Nagar and that the appellant was inducted as a tenant in the said shop at monthly rent of Rs.1000/-. The appellant failed to pay rent since 1.4.2011 and also impaired the value and utility of the shop. Respondents No.1 and 2 terminated the tenancy of the appellant by serving him legal notice dated 11.1.2012 but he failed to vacate the shop in question. Hence the suit.

3. The suit was contested by the appellant who filed written statement taking preliminary objections with regard to maintainability of the suit, *locus standi* and cause of action of respondents No.1 and 2. On merits, the relationship of landlord and tenant between the parties was denied and it was pleaded that Parkash Chand father of respondents No.1 and 2 was owner of the shop and he let out the same to the appellant at monthly rent of Rs. 225/- vide rent note dated 7.1.1989 and with the passage of time, the rent was enhanced to Rs. 290/- per month and then to Rs. 430/- per month and Parkash Chand was regularly

receiving the rent against proper receipts. In 2008, Parkash Chand fell ill and then his wife Saraswati Devi started receiving rent and the appellant paid rent up to December, 2011 to her. Thereafter, the entire rent was being deposited in the Court. Prayer was made that the suit be dismissed.

4. From the pleadings of the parties, the following issues were framed : -

1. Whether the plaintiffs are entitled for ejectment, possession, recovery and for grant of mesne profits as detailed in the head note of the plaint? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the plaintiffs have no locus-standi to file and maintain the present suit? OPD
4. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
5. Whether the plaintiffs have not come to the court with clean hands and suppressed true and material facts from the Court? OPD
6. Relief.

5. Respondents No.1 and 2 in support of their case examined PW1 Rajvinder Singh, Draftsman and respondent No.2-Virender Kumar as PW2 who tendered into evidence documents legal notice dated 11.1.2012 Ex.P6, postal receipt and acknowledgement Ex.P7 and Ex.P8 and reply to the legal notice Ex.P9. PW3-Rohtash Singh, DRK proved documents Ex.P2 to Ex.P5. Respondents No.1 and 2 also tendered notification Ex.P12, sale deed Ex.P13 and site plan Ex.P14.

6. On the other hand, the appellant himself appeared in the witness box as DW1 and proved rent deed Ex.D1 and rent receipts Ex.D2 to Ex.D16 and reply to the legal notice as Ex.D17. DW2-Shiv Charan also proved rent deed Ex.D1 being it's attesting witness, DW-3/Rameshwar Dass, Clerk, UHBVNL proved electricity bills Ex.D18 to Ex.D23. DW4/Nitin Kumar, Sub Post Master proved postal receipts and money order receipts Ex.D24 to Ex.D28, Sumit Kumar Arora, Handwriting Expert while appearing in the witness box proved his report Ex.D29 and photograph charts Ex.D30 to Ex.D35, DW-6/Shiv Ram proved authority letter Ex.D36 and copies of house tax registers and receipts Ex.D37 to Ex.D40, DW7 Yashpal Mehta, Stamp Vendor proved relevant entry of his register Ex.D41. The appellant also tendered copy of notice dated 27.5.1996 mark 'X'.

7. After hearing counsel for the parties and going through the entire record, learned trial Court held that the provisions of Rent Act were not applicable to the property in dispute at the time of filing the suit and further vide notice dated 11.1.2012 Ex.P6, tenancy stands terminated and ultimately, the suit was decreed.

8. The appeal preferred by the appellant against the judgment and decree passed by the learned trial Court was also dismissed by the Court of District Judge, Yamuna Nagar vide

judgment and decree dated 21.3.2022.

9. By way of present appeal, the appellant has challenged the judgments/decrees passed by the learned trial Court and the first appellate Court.

10. Counsel for the appellant submits that no ground is made out to evict the appellant from the shop in question which was taken on rent by the appellant from the father of respondents No.1 and 2 vide rent deed Ex.D1; that the appellant has been regularly paying the rent of the shop and there is nothing on record that the appellant impaired the value and utility of the said premises.

11. Counsel for the appellant further submits that ample evidence is available on record to prove the relationship of landlord and tenant between the parties. He further submits that in such a situation, tenancy could not be terminated simply by issuing notice dated 11.1.2012 Ex.P6 to the tenant as has been done in the present case. However, counsel for the appellant has not disputed the fact that at the time of filing the suit, provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 (In short, "Rent Act") were not applicable to the suit property.

12. On the other hand, counsel appearing on behalf of respondents No.1 and 2 while supporting the impugned judgments/decrees, has submitted that as the Rent Act is not applicable in the present case, tenancy has been terminated by serving notice Ex.P6 to the appellant who was occupying the premises in dispute as a tenant under respondents No.1 and 2.

13. Counsel for respondents No.1 and 2 further apprised the Court that during tenancy of the present appeal, respondents No.1 and 2 have taken possession of the suit property from the appellant in the execution proceedings.

14. I have considered the submissions made by the counsel for the parties.

15. There is no dispute regarding the fact that the appellant was occupying the shop in question as a tenant under respondents No.1 and 2 and at the time of filing the suit, the provisions of Rent Act were not applicable to the suit property. Prior to the filing of the suit, legal notice Ex.P6 dated 11.1.2012 purported to be issued under Section 106 of Transfer of Property Act was issued by the respondents to the appellant with regard to termination of tenancy on expiry of the period specified in the notice. Concerned postal receipts are Ex.P7 and Ex.P8. Admittedly, said notice was received by the appellant and he gave its reply vide Ex.P9 dated 16.1.2012. So, it is apparent that notice Ex.P6 was received by the appellant on 15.1.2012 and as per said notice, tenancy would stand terminated on expiry of 15 days from the date of its receipt. Respondents No.1 and 2 filed suit for eviction on 29.2.2012 as the appellant failed to vacate the premises in dispute by that time. During the course of arguments, counsel for the appellant has not challenged legality of notice Ex.P6 in any manner. So, the learned trial Court rightly observed that in the present case, tenancy stood terminated with effect from 31.1.2012.

16. Pleas taken by the counsel for the appellant that in the instant case, the appellant was

not in arrears of rent and that he did not impair the value and utility of the shop, are of no relevance, the reason being the provisions of Rent Act are not attracted to the present case. A simple tenancy can be terminated by service of notice under Section 106 of Transfer of Property Act. Once a valid notice under Section 106 of Transfer of Property Act is served, possession of tenant over the property becomes illegal and unlawful and thus, learned trial Court rightly decreed the suit with the observation that tenancy stood terminated with effect from 31.1.2012.

17. Even the first appellate Court while re-appreciating the entire evidence, upheld the findings of the learned trial Court.

18. Further, counsel for respondents No.1 and 2 has apprised this Court that the appellant has vacated the shop in question and handed over its possession to respondents No.1 and 2 during execution proceedings.

19. In view of the above discussion made hereinabove, I do not find any illegality or irregularity so as to interfere with the findings recorded by both the Courts below which are mainly factual in nature and based on proper appreciation of evidence available on record. As such, no question of law muchless substantial question of law is involved in the present appeal warranting interference by this Court. Accordingly, the present appeal is dismissed.