

Vinod Kumar Sehgal Vs. Pushpa Devi

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Court : Punjab and Haryana

Decided On : Mar-07-2000

Reported in : (2000)126PLR240

Judge : R.L. Anand, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100; Haryana Urban (Control of Rent and Eviction) Act, 1973 - Sections 1(3)

Appeal No. : Regular Second Appeal No. 1041 of 2000

Appellant : Vinod Kumar Sehgal

Respondent : Pushpa Devi

Advocate for Pet/Ap. : V.K. Jain, Sr. Adv. Assisted by; Raman K. Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

R.L. Anand, J.

1. Vinod Kumar Sehgal is defendant in the trial Court and he has filed the present regular second appeal and it has been directed against the judgment and decree dated 17.2.2000 passed by Addl. District Judge, Gurgaon, who affirmed the judgment and decree dated 4.5.1999 passed by the Court of Civil Judge (Junior

Division), Gurgaon, which decreed the suit of Pushpa Devi plaintiff for possession with respect of the shop in question.

2.The brief facts of the case can be gathered in the following manner :-

Suit was filed by Smt. Pushpa Devi for possession by way of ejectment against the defendant-appellant on 26.8.1992 claiming possession of shop No. 1 constructed in building No. 135/4 situated in Jacobpura, Gurgaon shown in red colour and marked by letters ABCD in the site plan attached with the plaint.

The case set up by the plaintiff-respondent was that she was the owner of building bearing No. 135/4, which consists of six shops and open plot, situated opposite post office, Jacobpura, Krishan Mandir Road, Gurgaon. The defendant-appellant took shop No. 1 on rent, which was constructed in the building in the month of December, 1983, on monthly rental of Rs. 250/- from the previous owner Satish Kumar Gupta vide rent note dated 29.12.1983. Previously this shop was owned by Satish Kumar and Sunder Lal and when the said shop fell in the exclusive ownership of the plaintiff, then a fresh rent note was executed by the defendant in her favour on 12.5.1987 on the enhanced rate of Rs. 300/- per month. Later on the rent was enhanced to Rs. 400/- per month by mutual consent. According to the plaintiff, the shop in question was constructed and completed in April, 1983 and electric meter No. FC-319, which was applied in September, 1983 was installed in the shop in April, 1984. Hence, the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 are not applicable. It was further alleged by the plaintiff that the defendant had made material alterations in the shop. The plaintiff was not interested in keeping the defendant as a tenant and a notice dated 9.7.1992 was served upon the defendant terminating his tenancy under registered post and also through U.P.C. under Section 105 of the Transfer of Property Act. The said notice was duly served upon the defendant on 10.7.1992. Therefore, the tenancy of the defendant stood terminated w.e.f. 26.7.1992, i.e. after the expiry of 15 days from the receipt of the notice. It was further stated that the defendant is in arrears of rent from 1.12.1991 to 25.7.1992 at the rate of Rs. 400/- per month and he is liable to make the payment of compensation for the use and occupation of the shop in question at the rate of Rs. 400/- per month. The plaintiff asked the

defendant several times to vacate the shop in question but to no effect.

The notice of the suit was given to the defendant, who filed the written statement and pleaded that civil Court has no jurisdictions to try the suit as the property in dispute is within the municipal limits of Gurgaon and, therefore, the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Rent Act') are applicable. It was further pleaded that the suit has been filed in order to harass him with a mala fide intention. On merits, the defendant denied the ownership of the plaintiff of the building bearing No. 135/4.' The defendant denied that he took the shop in question on rent in December, 1983 and stated the shop was taken in the month of November, 1982 from its previous owners Satish Kumar and Sundar Lal and after renovating the shop he actually started his work in the month of December, 1982 under the name and style of Ram Hans Tailor, New Post Office, Jacobpura, Gurgaon. The rent note alleged by the plaintiff was also denied by the defendants stating that if the signatures of defendant were obtained on any document purported to be rent note, the same is not binding against his rights. However, the defendant admitted that when the shop was taken by him on rent, Sunder Lal and Satish Kumar were the owners of the same and it subsequently fell to the share of the plaintiff. He stated that a fresh rent note in favour of the plaintiff was executed by him on 12.5.1987 at the enhanced rate of Rs. 300/- per month. The rent was enhanced from Rs. 300/- to Rs. 400/-, but the same was not enhanced by mutual consent of the parties. The defendant paid the enhanced rent @ Rs. 300/- per month upto 31.1.1989 and thereafter the plaintiff refused to receive the rent except at the enhanced rate of Rs. 400/- per month. Consequently, the plaintiff threatened to initiate the proceedings for the ejectment of the defendant. It was also pleaded that the shop in question is a part of a very old building and it was not newly constructed. Gates were opened in the wall of the old building in January 1982, and a big hall was converted in the shop by erecting partition wall in the big hall. The shops are not new or were constructed and completed in April, 1983, hence the general provisions of law are not applicable. Rather the parties' rights are governed by the Rent Act. With this broad defence, the defendant prayed for the dismissal of the suit.

A re-joinder was filed by the landlady to the written statement of the defendant in which she reiterated her allegations made in the plaint by denying those often written statement and from the pleadings of the parties, the learned trial Court framed the following issues:-

1. Whether the shop in question was constructed and completed in April, 1983 and the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 are not applicable OPP
2. Whether the tenancy was terminated by serving of notice Under Section 106 of the T.P. Act? OPP
3. Whether Civil Court has no jurisdiction to try the suit OPP
4. Whether the suit is not maintainable in the present form OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Whether the suit is mala fide and has been filed to harass the defendant OPD.
7. Whether the plaintiff is estopped from filing the suit by his own act and conduct? OPD
8. Relief.

3. The parties led oral and documentary evidence in support of their respective cases and on the conclusion of the trial, the trial Court decided issue No. 1 in favour of the plaintiff and against the defendant. Issue No. 2 was decided in favour of the plaintiff and issues No. 3 to 7 were decided against the defendant. Resultantly, the suit of the plaintiff was decreed vide judgment and decree dated 4.5.1999 and the defendant was directed to hand over the vacant possession of the shop in question to the plaintiff within a period of the six months from the said date. The real contest between the parties was with respect to issue No. 1 before the trial Court, the findings on which went in favour of the plaintiff and against the defendant and the reasons given by the trial Court are reproduced as follows :-

'The burden is upon the plaintiff to prove that the shop in question was constructed and completed in April, 1983 and the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 are not applicable. To prove this issue, PW-8, husband of plaintiff appeared as Attorney on behalf of plaintiff Pushpa Devi. The Power of Attorney is proved as Ex.PW-8/A. He also proved the site plan as PW-8/2 in which the disputed shop is mentioned with red colour and deposed that the place where the shop is situated was a plot of 2/3 sq. yards which was purchased from Vidya Devi @ Jhulka by him and Vastav alias Satish Kumar. Copy of the sale deed is proved as Ex.P-3 Previously, in the year 1982, there were two shops Nos. 2 and 3 shown in the site plan constructed on the floor and before that there was no construction on the plot. The disputed shop was constructed in April, 1983 and the remaining shops Nos. 4,5 and 6 were constructed by Basant Mason in about 20 to 22 days in September 1983. They applied for electricity connection, which was installed in April, 1984. The meter bearing No. FC/319 is in the name of Satish Chand. PW-8 further deposed that the disputed shop was rented out to defendant in December, 1983 by Satish Kumar for which a rent note was also prepared in his presence, which he proved as Ex.P-1. After this, the plot was divided between him and Satish Kumar and the portion where the shops were situated, fell in his share while the back portion came in favour of Satish. He stated that this property in his name was transferred in the name of his wife vide judgment Ex.PW-7/2 and decree Ex.PW-7/3 of the Civil Court. PW-2 Shri Ram Vasika Nawis proved in evidence Ex.P-1, which was the rent note dated 29.12.83 written by him on the instance of Vinod Kumar. He made the entry about rent note in his register at Sr. No. 300. Satish Chand Gupta, PW-7 also deposed on similar lines stating that rasta and gate of the plot was present earlier, where the disputed shop was constructed. The shop was given to defendant on rent in the year 1983. Mason Basant Lal when appeared as PW-6 also corroborated to the version of PW-8 stating that the disputed shop was constructed by him in the year 1983. lie stated that earlier there was construction with mud and gate was also fixed. After destroying the said construction and after digging the foundation, the shop was newly constructed. It took 20-25 days to construct the disputed shop. On the other side, DW-2 the defendant deposed that the disputed shop was taken on rent by him in November, 1982 from Sunder Lal at the monthly rent of Rs. 200/- and he

started his work in the name of Ram Hans Tailor in the said shop in the end of November, 1982. And since then, he has been working as a tailor in the same. He stated that booking of the customers are recorded in their book in which date of booking and delivery are written. He produced in evidence the original counter book of the record maintained by him and proved the same as Ex.DW-2/1. Counsel for plaintiff on this issue argued that in the original WS filed by defendant, he admitted the shop was constructed in the month of December, 1982, but this stand of defendant was changed by him by filing amended W.S. He also argued that Ex.P-1 which is the rent note also shows that the disputed-shop was constructed in the year 1983, which was admitted by defendant, while he signed the same. Counsel for defendant raised argument by drawing the attention of the Court towards Ex.D-1. the notice sent to defendant through DW-1 i.e. Advocate Shri Tara Chand Gupta, which also mentions that the disputed shop was completed in 1982. But about this, counsel for plaintiff replied that plaintiff never engaged Shri Tara Chand Gupta as her Advocate and she also admitted that she did get any Vakalatnama signed in his favour. Neither he received any instruction from her. Counsel for defendant also contended that the admission can be withdrawn or can be proved erroneous and the same is not binding on the tenant. For this, he relied upon (1996-3) P.L.R. 114 and 1992(3) L.J.R. 732. As per PW-6 the disputed shop was constructed by him after digging foundation and while he constructed the shop, there were two other more shops all ready constructed. Though he admitted that one wall of disputes shop is joint with the other two walls. He denied the suggestion that earlier there was the big hall in place of disputed shop, which was converted into three shops after making partition. PW-8 has also stated that at the time, when plot was vacant, it was mentioned in the House Tax Assessment Register and when the shops were constructed then also, the same was registered in the House Tax Assessment Register. The House Tax Assessment Register is proved as Ex.PW-8/7 relating to the year 1978-79, which shows that the suit property was in the name of Sunder Lal and Satish. The property is mentioned as a plot having four walls while the Assessment Registrar for the year 1984-85 shows three shops on the same plot one of them under the tenancy of Ram Hans Tailor, i.e. the present defendant. With the House Tax Assessment Register on the record by plaintiff, it is clear that in 1983 there was no

shop constructed on the plot in the name of Sunder Lal and Satish. With the testimony of PW-7 and PW-8 and also of the mason Basant Lal, it is also proved that the disputed shop was constructed in April, 1983, which is further strengthened by the fact that Satish Chand applied for electricity connection on 15.9.83 as deposed by PW-1. The customer counter book proved as DW-2/1 by defendant does not mention any number of the shop on the receipts. The same is also not in proper condition. From the above discussion, it is clear that plaintiff has sufficiently proved that disputed shop was constructed and completed in April 1983. It is further strengthened by the presence of rent note proved on record and is signed by defendant himself and which clearly mentions that suit property is the newly constructed shop. With the oral as well as documentary evidence coupled with the admission of defendant at the time of signing the rent note, this issue is decided in favour of plaintiff.'

4. Defendant Vinod Kumar Sehgal filed the first appeal before the Court of Addl. District Judge, Gurgaon, which for the reasons given in paras No. 8 to 28 of its judgment, and reproduced as under, affirmed the judgment and decree of the trial Court and dismissed the appeal.

'8. Issue No. 1 and 3 from the pivot around which whole controversy between the parties revolves. The appellant being tenant under the respondent and the present rate of rent being Rs. 400/- per month, is not in dispute. Age of construction is to be determined. Completion of construction of the premises is to be determinative of the 'forum' of litigation between the parties. Jurisdiction of Rent Controller under the Act ensures only after ten years of completion of construction of the premises. The suit was filed on 26.8.1992. if the completion of construction is later than 26.8.1982, the Civil Court will have jurisdiction, otherwise the jurisdiction would be with the Rent Controller.

9. It would be noteworthy that the defendant-appellant in his written statement(originally filed on 15.4.1993) had clearly admitted the construction having been completed in December, 1983 when the shop was allegedly taken on rent by him as a first tenant. It was much later i.e. on 15.12.1997 that an amended written statement venturing to withdraw this admission, was filed.

10. Learned counsel for the appellant has argued that only that admission is best evidence for an opposite party to rely, which had not successfully been withdrawn by its makers. Support has been sought from the authorities reported as *Mehar Singh v. Faquir Chand and Ors.*, (1996-3)114 P.L.R. 114 (P &H); *Amar Nath v. Smt. Lajo*, (1998-3)120 P.L.R. 584; *Bharat Singh and Ors. v. Mst. Bhagirathi*, A.I.R. 1966 S.C. 405 and *Union of India v. Moksh Builders and Financers Ltd.* A.I.R. 1977 S.C. 409.

11. Learned counsel for the appellant seeking further support from *Brij Kishore v. Smt. Mushtari Khatoon*, A.I.R. 1976 Allahabad 399 has urged that unamended original written statements should be ignored while deciding an issue. There is no dispute about the law as cited above, and there cannot be any.

12. Learned counsel for the respondents, however, seeking support from *Naresh Kumar v. Om Parkash*, (1990-1) 97 PLR 670 has urged that though the earlier pleadings, withdrawn later successfully, would not bind the party making the same but such withdrawn pleadings definitely become a piece of evidence. No doubt, these do not remain pleadings any further for the purpose to go for trial thereon and no issue can be framed on such withdrawn pleadings, the effect of an admission made in the earlier written statement, however, can be taken note of while appreciating the evidence.

13. In view of the discussion as above, even though such admission had been withdrawn from the pleadings regarding construction of the shop in December, 1983, but this fact can definitely be used as piece of evidence.

14. Not only this, there is further admission of the tenant regarding construction of the building to be in 1983 in the rent note dated 29.12.1983 (Ex.P-1) where the construction is recited to be of 1983 of *Ishwar Singh Punia v. Atma Ram Mittal*, 1993(1) RLR 249(P&H;) where a tenant had himself recited year of completion of construction of the shop on rent with him in the Rent Note, his plea later giving different year of such completion of construction, was not accepted.

15. Even in the later Rent Note dated 12.5.1987 (Ex.P-2) the tenant has recited the construction to be of the year 1983.

16. Argument of the learned counsel for the appellant tenant that the year mentioned was 1984 and has been changed to 1983 in Rent Note (Ex.P-3) is of no consequence as we have merely to see as to whether the construction is earlier to 26.8.1982 or is later.

17. The tenant had produced Order Book (Ex.P-2/1) which shows that 'Ram Hans Tailors' had been carrying on business since 17.12.1982. This book cannot be related to the premises in dispute as no number of the shop is mentioned in Ex.RW-2/1. Identity of the shop in dispute with the shop where the appellant was allegedly carrying on his tailoring business and was using Ex.RW-2/1 has not been established.

18. Sh. Tara Chand Gupta, Advocate, through whom this notice was allegedly sent was examined by the appellant-defendant as DW-1. This notice (Ex. D-I) is purported to have been issued to the tenant. Pointed and probing cross-examination effected on this witness further brings hollowness of this notice to the fore as the witness has not been able to substantiate averments in Ex.D-1 to have been based on any instruction from the owner. The witness also could not show any power of attorney in his favour from the owner. Thus, notice (Ex.D-1) is of no probative force.

20. Sunder Lal (PW-8) is the husband and attorney (Ex. PW-8/1) of the plaintiff. Proving site plan (Ex.PW-8/2) of the shop in dispute, he has categorically stated that the disputed shop was constructed in April. 1983 and three more shops adjacent to it had been constructed in the year 1984. Whereas two shops had already been constructed earlier on the year 1982. Pointedly mentioning about this shop, it is deposed that the construction was raised by a mason with the name Basant.

21. Said Basant Lal was examined as PW-6. he has deposed in complete conformity with the statement of Sunder Lal (PW-8).

22. Satish Chand Gupta (PW-7) is brother of Sunder Lal (PW8). He has also stated that the shop in dispute was constructed in April, 1983. Pointed and probing cross-examination effected on these witnesses could not impeach their credit.

23. The building was earlier owned by Sunder Lal and Satish Kumar and later in a family partition, the shop had come to the share of Sunder Lal who suffered a decree (Ex.PW-7/3) in respect thereof in favour of his wife i.e. the plaintiff.

24. There is very strong evidence of neutral character proving the construction having been completed after 26.8.1982.

25. Electricity connection bearing Account No. FC-319 in the premises was applied in September, 1983 and was installed in April, 1984. This fact has been established by Ramesh Chand (PW-5) an official of HSEB.

26. In view of totality of evidence, as discussed above, uncorroborated testimony of the tenant defendant Vinod Kumar (DW-2) that the shop was an old construction and had been rented out to him in November, 1982 by Sunder Lal, is unacceptable.

27. Learned lower Court was right in accepting the version of the respondent-landlady that the construction of the shop in dispute was completed in April 1983.

28. As such findings returned by the learned lower Court under issues No. 1 and 3 are affirmed.'

In this manner the present regular second appeal by the tenant, which I am dismissing at the motion stage itself after hearing the learned senior counsel Mr. Jain, as this Court is not convinced with any of the submissions raised by the learned counsel for the appellant.

5. It is a regular second appeal and this Court will only interfere if there is a substantial question of law raised by the appellant or if there is a misreading of evidence by the Courts below. If the judgment is based on proper appreciation of evidence, then in the R.S.A. the High Court will not interfere.

6. The main point for determination in this case is as to whether the shop in question forming part of building No. 135/4 was constructed in the month of April, 1983 as claimed and alleged by the plaintiff and if this aspect of the case is answered in affirmative then on such buildings there is an exemption of ten years

and the provisions of the Rent Act would not be applicable to such type of buildings and the landlord is entitled to seek eviction of the tenant as per the provisions of the Transfer of property Act after serving a notice under Section 106 of the Act. It may also be mentioned here that the plaintiff filed the present suit before the trial Court on 26.8.1992. First of all, there is a statement of the attorney of the plaintiff, who has given the history of the property. As per this witness, the disputed shop was constructed in April, 1983 and the remaining shops bearing Nos. 4, 5, and 6 were constructed in the year 1984. The electric connection was applied for this shop which was installed in the month of April, 1984. It was also stated by the attorney of the plaintiff that the disputed shop was given on rent to the defendant in the month of December, 1983 by Satish Kumar for which rent note was also executed. After this, the plot was divided between him and Satish Kumar and the portion where the shops were situated fell in his share while the back portion came in favour of Satish Kumar. It has further been stated by the said witness that the plot in question was transferred in the name of his wife vide judgment Ex.PW-7/2 and decree Ex.PW-7/3 passed by the Civil court. Further, a rent note was executed by the defendant on 29.12.1983. There are two types of admissions. One is judicial when those are made by the parties in the course of their proceedings, yet there is another type of admission which a party makes during the course of execution of documents but outside the Court. Ex.P-1 is the rent note which was shown to me by the learned counsel for the appellant during the course of submissions. There is clear admission on the part of the tenant that the shop in question was constructed and completed by the landlord in the year 1983. This rent note is dated 29.12.1983. The tenancy was at the rate of Rs. 250/- per month. It was executed in favour of Satish Gupta. On more rent note was shown to me i.e. Ex. P-2. This is dated 12.5.1987 executed by the present appellant in respect of this very shop and the rate of rent was enhanced to Rs. 300/- per month. It was executed in favour of the respondent Smt. Pushpa Devi and there is a clear admission that the shop in question has been constructed in the year 1984.

7. The learned counsel for the appellant submitted that since the admissions of the tenant which he made under compelled circumstances are contradictory in nature, therefore, these admissions have no meaning in the eyes of law. He submitted

that in the rent note Ex.P-2 the averment is that the shop in question was constructed in the year 1984, whereas in the rent note it is stated that it was executed in the year 1983. Therefore, it is clear that these recitals in the two rent notes have been made under compelled circumstances at the instance of the landlord/landlady, who wanted to dictate his/her own terms to the tenant, who was in dire need of tenancy and, therefore, the landlord/landlady conveniently wrote these recitals. This argument is not acceptable to this Court. No doubt, the admissions can be successfully withdrawn but in the present case there is not an iota of evidence on the record that after the execution of the rent notes in the years 1983 and 1987 respectively the tenant had served any notice upon the landlord calling upon him to treat these admissions as illegal. The fact remains that the shop in question was constructed and completed in the year 1983 i.e. prior to 26.8.1982 and in these circumstances for ten years the provisions of the Rent Act are not applicable and the present suit was instituted on 26.8.1992. The learned counsel for the appellant was highly critical that the first Appellant Court has wrongly stated that the tenant had admitted in his written statement filed on 15.4.1993 that the construction was completed in the month of December, 1983 when the shop was taken by him on rent as first tenant. The learned counsel submitted that no such admission was made by the tenant in the original written statement filed on 15.4.1993, and, therefore, the decree has been wrongly affirmed by the first Appellate Court. I have also considered this submission raised by the learned counsel for the appellant. Even if it is assumed for the sake of argument that there was no categorical admission on the part of the tenant in the written statement filed on 15.4.1993 containing the admission that the shop in question was constructed or completed in December, 1983, still there is ample evidence to prove on the record that this was a new building which was constructed in the year 1983, definitely after 26.8.1982, and, therefore, the provisions of Rent Act are not applicable. I have already referred to two rent notes Ex.P-1 and Ex.P-2, wherein there is an admission on the part of the tenant with regard to the year of construction of the shop in question.

8. The learned counsel for the appellant then submitted that earlier the landlady issued notice Ex. D-1 in which it is alleged that the shop in question was constructed in the year 1982 and in these circumstances it is not open to the

landlady that the shop was constructed in the year 1983. The counsel submitted that if the shop was constructed in the year 1982, then the provisions of the Rent Act will be applicable as the present suit has been instituted on 26.8.1992. Again there is a fallacy in the argument of the learned counsel. I have just said that the suit was instituted on 26.8.1992 meaning thereby that the plaintiff can still succeed if she establishes that the shop was constructed and completed after 26.8.1982, even if she fails categorically to establish that it was constructed and completed in the month of April, 1983.

9. The learned senior counsel further submitted that in the notice which was given to the defendant by Mr. Tara Chand Gupta, Advocate there is an admission that the shop in question was constructed in the year 1982, therefore, the provisions of the Rent Act are applicable. The notice Ex.D-1 cannot be acted upon for two reasons. Firstly, because in this notice there is no indication or admission on the part of the landlady that the shop in question was constructed prior to 26.8.1982. Apart from that, the tenant has not led any evidence to show that he had been occupying the shop prior to 26.8.1982. The tenant produced order-book Ex. RW-2/1 in order to show that he had been occupying the shop and carrying on the business of tailoring since 17.12.1982. Still there is no evidence to indicate that the tenant ever occupied this very shop prior to 26.8.1982. However, it has been observed by the first Appellate Court that the order book Ex. RW-2/1 does not relate to the premises in dispute as no number of the shop has been mentioned in it. The defendant could defeat the plaintiffs case by showing his account books or other record to indicate that this shop was in existence prior to 26.8.1982. Mr. Tara Chand Gupta, Advocate, who allegedly gave the notice to the defendant, was not in a position to produce any written authority in his favour. There can be even honest clerical mistake on the part of the lawyer when he wrote the year 1982 instead of 1983. Moreover, in order to run a shop of tailoring electric connection is very essential. It is proved on the record that electric connection bearing No. FC-319 was applied in September, 1983 and this connection was installed in April, 1984. There is not an iota of evidence led by the tenant to show that he occupied the shop in question prior to August, 1982 or that he had been taking the electricity temporarily from the Punjab State Electricity Board or from the neighbourhood in order to run his business.

10. As I stated at the outset that the pivotal point for determination is as to whether the provisions of Section 13 of the Rent Act are applicable or not in this case. It is a question of fact as to when the premises in question were built and completed. Both the Courts after due appreciation of evidence came to the conclusion that the shop in question was constructed in the year 1983.

11. Faced with this difficulty the learned counsel for the appellant then submitted that the shop in question cannot be held to be a building because one intervening wall adjoining to shop No. 2 was already in existence. He further submitted that one more wall was already in existence towards the western side and in these circumstances it cannot be described that shop No. 1 is a building. He relies upon *Sadhu Singh S. Mulla Singh v. Distt. Board, Gurdaspur and Anr.*, AIR 1962 Punjab 204. Wherein the Hon'ble Division Bench interpreted as to whether re-construction of a part of building amounts to construction within the meaning of the notification and the Hon'ble Division Bench held as under:-

'No inflexible rule can be laid down to determine when a reconstructed building can be said to be 'constructed building' within the meaning of the notification, exempting building constructed in the years 1956, 1957 and 1958 from the date of construction. In fact, every reconstruction is construction. The suffix 're' means 'again' but that would not take away reconstructed building from the ambit and scope of the notification because the notification deals with buildings constructed during certain specified years and gives exemption to them from the operation of the Act. The question whether a building has been constructed so as to attach the exemption from the provisions of the Act by virtue of the notification would depend on the facts and circumstances of each case.

12. In the opinion of this Court, this judgment does not come to the rescue of the appellant. It will depend upon the evidence which has been led by the parties, the defendant could lead ample evidence to rebut the clinching evidence of the plaintiff to show that the shop in question was constructed prior to 26.8.1982. When Shri Ganpat, deed-writer appeared as PW-3 and proved the rent note dated 12.5.1987 Ex.P-2 not an iota of suggestion was put to the witness that the year has been wrongly written or that the contents of the document were not read over to the

defendant/tenant. Similarly when PW-2 Siri Ram appeared in the witness-box in order to prove the rent note Ex.P-1 not a single suggestion was given to this witness that the rent note Ex.P-1 has been written under oppression. PW-5 Ramesh Chand, Consumer Clerk, H.S.E.B. categorically stated that the electric connection was released on 15.4.1984. Defendant Vinod Kumar while appearing as DW-2 had to admit that earlier to the installation of electric connection he had been availing the electricity from the owner of a dairy and the uncle of Sunder Lal was the owner of the dairy. The defendant could conveniently examine such witness to establish that he started occupying that shop prior to 26.8.1982, but he has not examined any person from the neighborhood. There is no oral and documentary evidence in this regard to prove his possession prior to 26.8.1982. Also in the rent notes Ex.P-1, and Ex.P-2 there is no such recital that he had been occupying the shop prior to 1982. In the application under Order 6 Rule 17 C.P.C. the defendant had stated as follows:-

'That in the written statement in para No. 2 the defendant has inadvertently not disputed that shop had been taken by him in the month of December, 1983 from its previous owner Sh. Satish Gupta and Sunder Lal. In fact, the shop in question was taken by the defendant in the month of November, 1982 on which date he had taken the shop and after its renovation started the actual work therein in the month of December, 1982 under the name and style of Ram Hans Tailors, near Post Office, Jacobpura, Gurgaon.'

This averment in the said application brings the cat out of the bag. This gives to an interpretation that it was the categorical stand of the plaintiff that defendant was inducted in the shop somewhere in the month of December, 1983. Now the stand of the defendant is that he took the shop on rent in the month of November, 1982 and he started the business in the month of December, 1982. As per the case of the defendant it was a case of renovation and as per the case of the plaintiff it was a case of new construction. If it is established on the record that it is a case of new construction or reconstruction, there is no denying the fact that the present suit has been instituted within 10 years of its construction or reconstruction i.e. on 26.8.1992 and there was an exemption for a period of 10 years to the newly constructed buildings. I have already stated above that both the Courts have

rightly appreciated the evidence and came to the conclusion that the shop in question was completed and constructed somewhere in the month of April, 1983. At any rate, it was completed and constructed after 26.8.1992, and, therefore, the provisions of Rent Act would not be applicable in the present case. The tenancy of the defendant has been rightly terminated as per the provisions of Section 106 of the Transfer of Property Act.

13. In the final assessment of this appeal, I am of the considered opinion that this appeal is totally devoid of any merit and the same is hereby dismissed in limine with no order as to costs. However, the tenant/defendant is granted three-month time to vacate the premises from today, failing which it will always be open for the owner/landlady to claim the possession of the demised premises as per law.

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