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Vijay Kumar Vs. Mahesh Kumar

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Court : Punjab and Haryana

Decided On : Aug-02-2004

Reported in : AIR2005P& H70; (2004)138PLR524

Judge : M.M. Kumar, J.

Acts : Haryana Urban (Control of Rent and Eviction) Act, 1973 - Sections 13; Registration Act, 1908 - Sections 17(1) and 49

Appeal No. : Civil Revision No. 489 of 2003

Appellant : Vijay Kumar

Respondent : Mahesh Kumar

Advocate for Def. : Sunil Panwar, Adv.

Advocate for Pet/Ap. : Parveen Hans, Adv.

Disposition : Petition succeeded

Judgement :

M.M. Kumar, J.

1.This petition filed by the petitioner-landlord under Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for brevity the Act) challenges order dated 3.1.2003 passed by the Rent Controller, Hansi holding that the

document dated 12.9.1997 since requires registration cannot be exhibited by sustaining an objection raised by the tenant-respondent.

2. Brief facts of the case are that demised shop was allegedly rented out to the tenant-respondent vide document dated 12.9.1997 @ Rs. 2200/- p.m. as rent. The petitioner-landlord filed ejectment petition being case No. 20/2 on 17.3.1998 against the tenant-respondent on various grounds including the ground of non-payment of rent. After notice, tenant-respondent had appeared and issues were framed. When the petitioner-landlord sought to exhibit the document dated 12.9.1997, the tenant-respondent raised an objection that the document is a lease deed and it cannot be exhibited because it requires registration under Section 17(l)(d) of the Registration Act, 1908 (for brevity the Registration Act). The operative part of the order of the Rent Controller reads as under: -

'In the present case, nothing has been mentioned about this document dated 12.9.1997 in the petition. However, in the replication it is pleaded in reply to para No. l on merits, mat respondent had executed an agreement regarding rent in favour of previous owner Smt. Sunita Jain on 12.9.1997. From the perusal of the agreement dated 12.9.97, it reveals that the property in dispute was taken on rent by respondent on 1.8.1997 on the certain terms and conditions. Condition Nos. l, 10 and 11 are relevant to decide the present controversy. According to condition No. l, the total rent of the four shops shall be Rs. 1955+245 as house-tax and the respondent shall pay the rent of the shop on every month. According to condition No. 10, the respondent shall enhance 25% of the rent after the expiry of 5 years of the period of tenancy. According to condition No. l 1 if the respondent remains as a tenant in the property in dispute for a period upto 15 years in that case, he shall enhance 37% of the rent. To my mind, condition No. l defines the mode of payment of rent and it says how the rent shall be paid. Condition No. 10 defines the period of tenancy. Accordingly to this condition initially the shops in dispute were let out for a period of five years. Meaning thereby, the tenancy was created for a period of more than one year. From the perusal of this document dated 12.5.97 [sic 12.9.1997] as a whole it reveals that it is not a rent note rather it is a lease deed because this document was signed by both the parties as well as by an attesting witness and this deed was executed for a period of five years.

Therefore, this lease deed is for a period exceeding 11 months and it requires compulsorily registration. This document comes under the four corners of Section 17(l)(d) of the Registration Act, 1908 and also comes under the provisions of Section 107 of the Transfer of Property Act. According to Section 49 of the Registration Act no document which is required by Section 17 or any provisions of Transfer of Property Act to be registered shall be taken into evidence for any transaction affecting such property unless it has been registered. In this regard reliance can be placed on the case law titled Satish Kumar v. Zirif Ahmed and Ors. 1997(2) S.L.J. 1827 : [1997(3) S.C.C. 679] wherein the Hon'ble Supreme Court has taken the same view. The case laws titled State of Maharashtra v. Atur India Private Ltd., 1994 H.R.R. 406. M/s Jai Jagdamba Trading Company v. Smt. Asharafit Devi, 1987(2) Rent Control Reporter 677, Hari Shankar Gupta v. Sudhir Nirvan, 1989(1) R.L.R. 709 referred by learned counsel for the petitioner are not applicable on the facts and circumstances of the present case.'

3. Shri Parveen Hans, learned counsel for the landlord-petitioner has argued that the document dated 12.9.1997 is necessarily a rent note executed between the parties and that there is a specific admission in this regard in the written statement filed by the tenant-respondent. According to the learned counsel a perusal of the written statement shows that the demised shop was on rent earlier to the execution of the document dated 12.9.1997 at a far less rate but the rate of rent was increased by executing the rent deed dated 12.9.1997. The rent was increased to Rs. 1955/- plus Rs. 245/- as house-tax which is to be taken as fair rent. The learned counsel has also argued that for the sake of arguments if it is admitted that the document dated 12.9.1997 is a lease deed and is compulsorily registrable, then it could still be used for a collateral purpose under Section 49 of the Registration Act to show the nature of possession. The learned counsel has maintained that the document would still be a relevant piece of evidence.

4. Shri Sunil Panwar, learned counsel for the respondent, has argued that the document dated 12.9.1997 is necessarily a lease deed which has been signed by both the parties and the attesting witnesses. The document is of such character that it cannot be considered to be a rent note which could be considered as a lease deed. The learned counsel has submitted that once the document is

accepted as a lease deed then the same is required to be registered as per Section 17(l)(d) of the Registration Act, 1908.

5. After hearing learned counsel for the parties, I am of the considered view that the instant petition deserves to be accepted. If the petitioner-landlord has inducted a person as a tenant by delivering him possession of his building and such a person is paying monthly rent, then the relation between the parties would be that of a landlord and tenant. The tenant-respondent in such a situation becomes a statutory tenant and could not be evicted except on the grounds available under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973. The document may or may not be considered as a proof of lease between a landlord and a tenant on account of its non-registration. But at this stage the document has to be admitted because it is an early stage to throw away a document which may rather prove a collateral purpose.

6. It is well settled that a document would be admissible in evidence under Section 49 of the Registration Act for a collateral purpose. In this regard, reliance can be placed on a jdgment of the Supreme Court in Rana Vidya Bhushan Singh v. Rati Ram,1 1969 Unreported Judgment (S.C.) 86. The reliance of the Rent Controller on the jdgment of the Supreme Court in Satish Kumar's case (supra) is wholly misplaced and improper at this stage of the proceedings because it is too early to throw a document out of consideration. No one can imagine what type of evidence would be adduced by the parties. Moreover in the present case, admittedly the Haryana Rent Act is applicable and the tenant-respondent is a statutory tenant. There is no defence set up in the written statement by the tenant-respondent showing that there is dispute concerning relationship of landlord and tenant. In para No. l of the reply, it has been specifically admitted that the demised shop earlier was owned by one Dev Raj then by Mrs. Sunita Jain and then by the present petitioner-landlord. Once the provisions of Rent Act are applicable then the ratio of the jdgment in Anthony v. K.C. Ittoop and Sons,2 (2000)6 S.C.C. 394 would be applicable. The observations of their Lordships read as under: -

'11. The resultant position is insurmountable that so far as the instrument of lease is concerned there is no scope for holding that the appellant is a lessee by virtue

of the said instrument. The Court is disabled from using the instrument as evidence and hence it goes out of consideration in this case, hook, line and sinke (vide (Shantabai v. State of Bombay, A.I.R. 1958 S.C. 32; Satish Chand Makhan v. Goverdhan Das Byas, (1984)1 S.C.C. 369 and Bajaj Auto Ltd. v. BehariLal Kohli, (1989)4 S.C.C. 39. 12. But the above finding does not exhaust the scope of the issue whether the appellant is a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of immovable property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer or right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how lease are created. The first para has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third para can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second para. Thus, dehors the instrument parties can create a lease as envisaged in the second para of Section 107 which reads thus:

'All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.'

13. When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the Court to determine whether there was in fact a lease otherwise than through such deed.

14. When it is admitted by both sides that the appellant was inducted into the possession of the building by the owner thereof and that the appellant was paying monthly rent or had agreed to pay rent in respect of the building, the legal character of the appellant's possession has to be attributed to a jural relationship between the parties. Such a jural relationship, on the fact situation of this case, cannot be placed anything different from that of lessor and lessee falling within the

purview of the second para of Section 107 of the TP Act extracted above. From the pleadings of the parties there is no possibility for holding that the nature of possession of the appellant in respect of the building is anything other than as a lessee.

15. Shri P. Krishnamoorthy, learned Senior Counsel contended that a lease need not necessarily be the corollary of such a situation as possession of the appellant could as well as permissive. We are unable to agree with the submission on the fact-situation of this case that the appellant's possession of the building can be one of mere permissive nature without any right or liabilities attached to it. When it is admitted that legal possession of the building has been transferred to the appellant there is no scope for countenancing even a case of licence. A transfer of right in the building for enjoyment, of which the consideration of payment of monthly rent has been fixed, can reasonably be presumed. Since the lease could not fall within the first paragraph of Section 107 it could not have been for a period exceeding one year. The further presumption is that the lease would fall within the ambit of residuary second paragraph of Section 107 of the TP Act.

16. Taking a different view would be contrary to the reality when parties clearly intended to create a lease though the document which they executed had not gone into the processes of registration. That lacuna had affected the validity of the document, but what had happened between the parties in respect of the property became a reality. Non-registration of the document had caused only two consequences. One is that no lease exceeding one year was created. Second is that the instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remains unrebutted.'

7. It is, thus evident that the landlord has accepted the application of the Rent Act and has sought ejectment on the ground specified in the Rent Act. It is not a case where notice of termination of tenancy under Section 106 of the Transfer of Property Act, 1882 has been issued and then a suit for possession by the landlord has been filed as was the position in Satish Kumar's case (supra). In cases where statutory tenancy is admitted such a notice is not required. This principle is laid

down by the Supreme Court in the cases of Sardarilall Vishwanath v. Pritam Singh,3 (1978)4 S.C.C. 1 and V. Dhanapal Chettiar v. Yesodai Ammal,4 (1979)4 S.C.C. 214. Therefore, the impugned order is liable to be set aside.

8. For the reasons stated above, this petition succeeds and the order dated 3.1.2003 passed by the Rent Controller is set aside and the document dated 12.9.1997 is allowed to be exhibited subject to objection of the tenant-respondent which may be decided at the stage of arguments. The Rent Controller shall proceed with the matter as expeditiously as possible and dispose of the same within one year.

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