

Before Paramjeet Singh, J.

UDAI SINGH —Appellant

versus

DHARA SINGH—Respondent

RSA No. 1001 of 1986

August 13, 2013

Code of Civil Procedure, 1908 - S. 100 - Transfer of Property Act, 1882 - S.107 - Registration Act, 1908 - Ss.17 & 49 - Indian Stamp Act, 1899 - S. 2(14) - Appellant's father owner of shop and respondent tenant in the shop - Rent note dated 20.09.1978 was executed for eleven months - Rent and House tax not paid - Suit for recovery filed - Trial Court decreed the suit and Appellate court reversed the finding on the ground that rent note is not registered so not admissible in evidence therefore no relationship of landlord and tenant between the parties - Appeal allowed holding that a rent note executed for a period of not exceeding eleven months, reduced to writing and

possession delivered to tenant is not compulsorily registrable instrument therefore provisions of section 49 of Registration Act will not apply as a rent note for eleven months is not required to be registered and as such admissible in evidence

Held, that the combined effect of all the provisions, hereinbefore mentioned, is that a rent note executed for a period of not exceeding eleven months, though reduced to wring and possession is delivered there under to a tenant, is not compulsorily registrable instrument. Therefore, provisions of Section 49 of the Registration Act will not apply. As the rent note Ex.P1 is only for eleven months, it is not required to be registered and as such is admissible in evidence. As such the finding of the learned lower appellate Court with regard to non-admissibility of rent note Ex.P1 for want of registration is not sustainable in the eyes of law. Hence the same is set aside.

(Para 20)

Alka Sarin, Advocate, *for the appellant.*

R.S. Sihota, Sr. Advocate, with B.R. Rana, Advocate, *for the respondent.*

PARAMJEET SINGH, J.

(1) Instant regular second appeal has been filed impugning the order dated 15.2.1986 passed by learned District Judge, Faridabad, whereby judgment and decree dated 5.3.1985 passed by learned Sub Judge 1st Class, Palwal, has been set aside.

(2) Brief facts of the case are that plaintiff/appellant's father deceased Charan Singh was the owner of a shop shown in letters ABCD depicted in red colour in the site plan. The said shop is situated within the municipal limits of Palwal. Defendant/respondent got the said shop on rent from the father of the plaintiff/appellant at the rate of Rs.200/- per month and house tax on 20.9.1978. The rent note dated 20.9.1978 was executed for eleven months. Defendant/respondent was said to be occupant of the shop as a tenant. It was alleged that Charan Singh, original owner, expired about 1 ¼ years back and plaintiff being the only legal heir and successor of deceased Charan Singh became owner of the shop in dispute. It was further submitted that defendant had not paid rent for three years ranging from

20.2.1980 to 19.2.1983 to the tune of Rs.7200/- plus house tax to the tune of Rs.660/-. Hence the suit for recovery was filed. On notice defendant appeared and filed written statement stating that plaintiff had no cause of action against the defendant. It was denied that plaintiff is the son of alleged Charan Singh. It was further submitted that neither plaintiff nor alleged Charan Singh has any interest, right or title in the shop in dispute. It was denied that the defendant took the shop in question on rent from alleged Charan Singh. The alleged rent note was alleged to be false, fictitious and sham document and not admissible in evidence for want of registration. Replication was filed denying the averments made in the written statement.

(3) Learned trial court, after perusal of the proceedings, framed following issues: -

"1. Whether the plaintiff is entitled to recover Rs.7860/- as alleged in the plaint? OPP.

2. Whether the suit is liable to be stayed under Section 10 C.P.C.? OPD

3. Whether the plaintiff has no cause of action for filing the suit? OPD.

4. Relief."

(4) Learned trial court, after recording the findings on the issues framed, decreed the suit of the plaintiff. Against the judgment and decree passed by learned trial court, respondent/defendant preferred an appeal, same has been allowed and the suit of the appellant/plaintiff has been dismissed. Hence this regular second appeal.

(5) At the time of filing of the present appeal, no substantial questions of law were framed, however, during the pendency of present appeal, substantial questions of law have been placed on record, which are as under: -

"1. Whether the lower appellate court erred in holding that the relationship of landlord and tenant was not proved?

2. Whether merely by not relying upon the rent note Ex.P1, the lower appellate court could come to the conclusion that the appellant was not the landlord?

3. *Whether the lower appellate court has erred in overlooking the overwhelming evidence on the record to prove that the appellant was the son of Charan Singh?*

4. *Whether the judgment and decree passed by the lower appellate court is perverse and hence liable to be set aside?*

5. *Whether the lower appellate court has misread the evidence on the record?"*

(6) I have heard learned counsel for the parties and perused the record.

(7) From the arguments, which will be dealt with later on, this Court feels that following substantial questions of law arise in this appeal: -

"1. Whether unregistered rent note is admissible in evidence?

2. Whether there is complete non-reading and misreading of evidence on record by lower appellate court?

(8) Learned counsel for the appellant vehemently contended that learned lower appellate court has wrongly not taken into consideration the rent note Ex.P1 on the ground that it is not registered; as such inadmissible in evidence. Once the rent note is excluded then there is no relationship of landlord and tenant between the parties. The said finding is erroneous and not sustainable.

(9) Learned counsel for the appellant further submitted that so far as the finding with regard to the factum that appellant is not the son of deceased Charan Singh is concerned, learned lower appellate court reversed the judgment of learned trial court on the ground that it was not the property of Charan Singh rather it was in the name of Gulab Kaur wife of Charan Singh. It is settled principle of law that once the person accepts the relationship of landlord and tenant, he cannot deny the same in the subsequent proceedings.

(10) Learned counsel for the respondent vehemently opposed the contentions raised by learned counsel for the appellant and submitted that the findings recorded by learned lower appellate court are sustainable in law and there is no error of law or fact therein. The finding of facts have

been recorded by learned lower appellate court. There is no mis-reading and non-reading of the evidence by learned lower appellate court.

(11) Learned counsel for the respondent relied upon the judgment of this Court in *Pardeep Behal* versus *Kanwaljit Kaur and others (1)*, to contend that rent note is required to be registered and for non-registration, same is not admissible in evidence. Learned lower appellate court has rightly discarded the rent note.

(12) I have considered the rival contentions raised by learned counsel for the parties.

(13) First question is with regard to the admissibility of unregistered rent note in evidence. From the perusal of instrument, it is clear that it is for eleven months. This fact has not been disputed by the parties.

(14) Hon'ble Supreme had occasion to deal with the identical situation in *Satish Kumar* versus *Zarif Ahmed and others (2)*, wherein the Hon'ble Supreme Court observed as under: -

"The proviso is not applicable to the facts in this case and, therefore, it is not necessary to look into the exceptions engrafted vis-a-vis receipt of a documents comprising of three circumstances mentioned therein, namely, unregistered document used for enforcement of specific performance under the Specific Relief Act or used as an evidence of part performance of the contract under Section 53-A of the TP Act or using evidence for collateral transactions. The combined effect of all the provisions is that an unregistered leases deed executed from month to month for a period not exceeding 11 months, though reduced to writing and possession is delivered thereunder to a tenant, is not a compulsorily registrable instrument and, therefore, the prohibition contained in Section 49 of the Registration Act is inapplicable. Therefore, the document is admissible in evidence to consider the effect of the immovable property contained therein or to receive as an evidence of any transaction vis-a-vis such property."

(1) 2012 (3) R.C.R. (Civil) 50

(2) (1997) 3 SCC 679

(15) In this regard, reference can be made to Section 17(1)(d) of the Registration Act, 1908, which postulates as under: -

“17(1) the following documents shall be registered if the property to which they relate is situated in a district in which, and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871 or the Indian Registration Act, 1877, or this Act, came or comes into force, namely-

* * *

(d) lease of immovable property from year to year, or for any term exceeding one year, or reserving an yearly rent;”

(16) Word “instrument” has been defined in Section 2(14) of the Indian Stamp Act, 1899 postulating that: “Instrument includes every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded.”

(17) Section 3 of the Transfer of Property Act, 1882 also defines “instrument” to mean a non-testamentary instrument. Section 107 of the Transfer of Property Act regulates how lease is to be made. The first part thereof provides that a lease of immovable property from year to year, or for any term exceeding one year, or reserving an yearly rent, can be made only by a registered instrument. The second part thereof gives exception to the first part and provides that all other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

(18) In the light of above provisions, question arises whether a lease of immovable property from month to month or for eleven months is a compulsorily registrable document, though it was reduced to writing as an instrument defined under Section 2(14) of the Stamp Act. A conjoint reading of the first part of Section 107 read with Section 17(1) (d) of the Registration Act, as extracted hereinabove, does indicate that a lease of immovable property from year to year, or for any term exceeding one year or reserving an yearly rent should be made only by a registered instrument and all other instruments, though reduced to writing and accompanied by delivery of possession thereunder, are not compulsorily registrable instruments.

(19) Section 49 of the Registration Act prohibits receiving in evidence certain types of documents.

Section 49 of the Registration Act reads as under: -

“49. Effect of non-registration of documents required to be registered. No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall -

(a) affect any immovable property comprised therein, or

* * *

(c) be received as evidence of any transaction affecting such property or conferring such power; unless it has been registered:”

(20) The combined effect of all the provisions, hereinbefore mentioned, is that a rent note executed for a period of not exceeding eleven months, though reduced to writing and possession is delivered thereunder to a tenant, is not compulsorily registrable instrument. Therefore, provisions of Section 49 of the Registration Act will not apply. As the rent note Ex.P1 is only for eleven months, it is not required to be registered and as such is admissible in evidence. As such the finding of the learned lower appellate court with regard to nonadmissibility of rent note Ex.P1 for want of registration, is not sustainable in the eyes of law. Hence the same is set aside.

(21) The document has already been proved on record by examining the attesting witness. In view of this, relationship of landlord and tenant stands established between Charan Singh, who happened to be the father of appellant/plaintiff, and the tenant – Dara Singh.

(22) Now the question arises whether in a rent matter ownership of the property is required to be proved when relationship of landlord and tenant is established.

(23) Once respondent/defendant is held to be the tenant of Charan Singh, predecessor-in-interest of the appellant, then independent ownership of the land in such proceedings is not required to be proved since the present suit is only for recovery of unpaid rent for the period from 20.2.1980 to 19.2.1983. Besides this, learned lower appellate court has failed to appreciate

the evidence on record, which has been discussed by learned trial court in detail while deciding issue No.1. There is clear-cut misreading and non-reading of the evidence on record specially with regard to the voter list and the evidence of PW1. In view of this, finding in this regard is also not sustainable.

(24) In view of the above, appeal is allowed. Suit of the appellant/plaintiff is decreed with costs which are assessed at Rs.5,000/-.

A. Jain