

Before G. R. Majithia, J.

JAGDISH CHAND (DECEASED) THROUGH HIS LEGAL
HEIRS,—Appellants.

versus

CHHATTAR PAL.—Respondent.

Regular Second Appeal No. 7 of 1989.

19th December, 1990.

Transfer of Property Act, 1882—Ss. 53-A & 106—Registration Act, 1908—S. 49—Unregistered lease-deed—Extent of admissibility stated.

Held, that a lease which is in express terms for a period of one year or more and which is not terminable at wish or option is compulsorily registerable. An unregistered lease-deed cannot be referred to ascertain the period for which the lease was created. It can only be taken into consideration for collateral purpose, namely, the nature of possession of the occupant. (Paras 6 & 7)

Regular Second Appeal from the order of the Court of Shri B. R. Vohra, Additional District Judge, Ambala, dated 2nd November, 1988 affirming that of Shri T. C. Gupta, Senior Sub Judge, Ambala, dated 24th May, 1986, passing a decree for possession by ejectment of the impugned shops in favour of the plaintiff and against the defendant with costs.

Claim : Suit for possession by ejectment of the defendant from the shop situated in Bhainsa Tibba Tehsil Kalka District Ambala. Near Mandi Mansha Devi.

Civil Suit No. 822/78, dated 13th April, 1978.

R. S. Mittal, Advocate with Randeep Surjewala, Advocate, for the Petitioners.

Kanwaljit Singh, Advocate, for the Respondents.

JUDGMENT

G. R. Majithia, J.

(1) The unsuccessful defendant has come up in second appeal against the judgment and decree of the first appellate Court affirming on appeal those of the trial Judge whereby the suit of the plaintiff for possession by ejectment of the defendant was decreed.

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(2) Facts first:

Din Dayal was the original owner of the shop in dispute. He leased out the same to the defendant on monthly rent of Rs. 250. He sold the same to his real brother Chhattar Pal (plaintiff) by sale deed dated 24th November, 1977. The defendant became a tenant under the plaintiff by operation of law. The plaintiff served a notice on the defendant under Section 106 of the Transfer of Property Act (for short the Act) calling upon him to vacate the demised premises and also clear the arrears of rent. On his failure to do so, the instant suit giving rise to this appeal was filed.

(3) The defendant admitted that he was inducted as a tenant in shop by the original owner Din Dayal. A rent deed dated 24th September 1977 was executed under which the defendant was allowed to remain in possession of the demised premises for 20 years commencing from 1st March, 1978. It was further pleaded that the defendant entered into possession pursuant to the rent note and was entitled to protection of Section 53-A of the Act and he could not be evicted before expiry of 20 years.

(4) The trial Judge framed the following issues arising out of the pleadings of the parties :

- “1. Whether the plaintiff is the owner of the shop in dispute? OPP.
- 1-A. Whether the demised premises were taken on rent by the defendant from Din Dayal the previous owner of the same through a rent note dated 29th September, 1977 and if so to what effect ? OPD. (Framed subsequently).
2. Whether a notice under Section 106 of the Transfer of Property Act was served upon the defendant? OPP.
3. Whether the sale deed dated 24th November, 1977 was obtained by fraud etc. as alleged by the defendant ? OPD.
4. Whether the suit is not maintainable in the present form as alleged in the additional plea No 2 and preliminary objection No. 2 of the written statement ? OPD.
5. Whether the defendant made an improvement and if so to what amount and its effect ? OPD
6. Relief.”

The trial Judge answered issue No. 1 in favour of the plaintiff and it was held that he was the owner of the shop in dispute; issue Nos. 1-A and 3 to 5 were decided against the defendant. The suit was decreed. On appeal by the defendant, the first appellate Court affirmed the decree of the trial Court holding that the defendant came into possession of the demised premises prior to the execution of the lease deed dated 24th September, 1977 and that he did not enter into possession pursuant to the agreement of lease and section 53-A of the Act was inapplicable. The lease deed in question is compulsorily registerable and an unregistered lease deed is admissible in evidence only for proving collateral matters and not its terms.

(5) The learned counsel for the appellant submits that the lease deed can be looked into to determine the period for which it was created. The submission is devoid of merit.

(6) A lease is an instrument which transfers the lease hold rights in the property immediately and in *praesentia* to the lessee. A lease which is in express term for a period of one year or more and which is not terminable at wish or option is compulsorily registerable. An unregistered agreement of lease can be received as evidence for collateral purpose by invoking the proviso to Section 49 of the Registration Act. The terms of the lease are not collateral purposes within its meaning. The apex Court in *M/s Bajaj Auto Limited v. Behari Lal Kohli*, (1), observed thus:

"If a document is inadmissible for non-registration, all its terms are inadmissible including the one dealing with landlord's permission to his tenant to sub-let. It follows that the appellant cannot, in the present circumstances, be allowed to rely upon the clause in his unregistered lease deed."

(7) In the light of the authoritative pronouncement, an unregistered lease deed cannot be referred to ascertain the period for which the lease was created. It can only be taken into consideration for collateral purpose, namely, the nature of possession of the occupant. The appellant is in possession as a tenant, his right can be revoked in accordance with law and the landlord can seek his ejection. No fault can be found with the conclusion arrived at by the first appellate Court.

(1) Judgments Today 1989 (3) S.C. 324.

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(8) However, in the circumstances of the instant case, the conduct of the lessor Din Dayal has to be condemned. He executed a lease deed dated September 24, 1977, which was to come into effect on March 1, 1978 under which the appellant was allowed to remain in possession as a tenant for 20 years. On November 24, 1977, he sold the property to his real brother-plaintiff Chhattar Pal for an ostensible consideration of Rs. 25,000. The plaintiff served a notice under Section 106 of the Act on 13th March, 1978 and the suit was filed on 13th April, 1978. The sale appears to have been made with an oblique motive to nullify the effect of lease deed and it appears that it was for this reason that it was not got registered. After execution of sale deed, Din Dayal the predecessor-in-interest of the plaintiff has been receiving rent from the appellant. It may not be a valid payment. However, it does reveal the conduct of the parties. The counsel for the appellant submitted that keeping in view the peculiar facts of this particular case, he may be allowed two years' time to vacate the demised premises.

(9) For the reasons aforesaid, the appeal is devoid of merits and is dismissed with no order as to costs. But in view of the peculiar facts of this case, I allow the appellant two years' time to vacate the demised premises.

S.C.K.