A MADAN MOHAN SINGH

v.

VED PRAKASH ARYA

(Civil Appeal Nos. 814-815 of 2021)

B MARCH 05, 2021

[ASHOK BHUSHAN AND R. SUBHASH REDDY, JJ.]

Eviction of unauthorised occupants – Appellant was allotted a booth – The allotment letter specifically provided that appellant had no right to transfer his rights directly or indirectly and was also restrained from subletting the booth – Appellant entered into a partnership deed dated 18.12.1976 with the respondent for carrying out the business of cycle repairing – However, later partnership was dissolved and respondent became an employee of the appellant in the booth – Dispute arose between the appellant and the respondent – Appellant sought possession of the booth – Respondent took the defence that he was the tenant of the premises which was let out to him in 18.12.1976 – The Chief Administrator in its order dated 04.03.1986 had concluded that the respondent was a servant of the hirer/appellant – Held: The present is not a case where respondent claimed any rent agreement – There was no rent receipt filed by the respondent in support of his claim of tenancy – When there is no evidence of taking premises on rent and it is admitted by respondent that he had not maintained any record of accounts of payment of rent, there is no base for holding that relationship of landlord and tenant is proved – Thus, respondent had failed to prove any documents pertaining to tenancy – One more fact to be noticed is that the defendant claimed his tenancy with effect from 18.12.1976 – On 18.12.1976, admittedly partnership deed was signed both by the plaintiff and defendant which was before the Court – When the parties signed a document and entered into a partnership deed, they cannot wish away the consequences which flow from the signing of deed – The appellant having categorically denied the tenanacy and there being no evidence with regard to the tenancy, there is no doubt in concluding that respondent was not a tenant of the premises – Clause 12 of the Allotment Letter prohibited the hirer from subletting the premises or any part thereof and decision of the Chief Administrator was stated to be final in case of dispute – The finding

of the Chief Administrator dated 04.03.1986 cannot be ignored – Therefore, the Estate Officer directed to put the appellant immediately in possession of the premises of Booth.

Allowing the appeals, the Court

HELD: 1. The categorical finding recorded by the trial court is that the respondent-defendant failed to prove any documents pertaining to the tenancy. The tenancy is a relationship which is created between two parties. The agreement of tenancy can be both by writing or oral. Even if there is oral agreement of tenancy, the Court has to look into the circumstances and intention of the parties and other material to conclude as to whether there was any tenancy or not. The present is not a case where defendant claimed any rent agreement. The defendant has come up with a case that he is paying rent at the rate of Rs.450/- per month. Defendant in his written statement has stated that appellant-plaintiff has never issued any rent receipt. Thus, present is not a case where there was any rent receipt filed by the defendant in support of his claim of tenancy. [Para 17][1070-A-C]

2. When there is no evidence of taking premises on rent and it is admitted by DW-2/respondent that he had not maintained any record of accounts of payment of rent, there is no base for holding that relationship of landlord and tenant is proved. The trial court itself has held that defendant had failed to prove any documents pertaining to tenancy. The First Appellate Court, thus, has rightly come to the conclusion that findings of the trial court that the respondent-defendant is a tenant is based on the surmises and conjectures. [Para 19][1070-G-H]

3. One more fact to be noticed is that the defendant claimed his tenancy with effect from 18.12.1976. On 18.12.1976, admittedly partnership deed was signed both by the plaintiff and defendant which was before the Court. The defendant had not denied the execution of partnership deed but he wanted to wish-away the partnership deed saying that it was a sham document to save the hirer from rigours of clause 12 of the Allotment Order. When the parties signed a document and entered into a partnership deed, they cannot wish away the consequences which flow from the

signing of deed. The plaintiff having categorically denied the tenanacy and there being no evidence with regard to the tenancy, there is no error in the judgment of the First Appellate Court that defendant was not a tenant of the premises. [Para 20][1071-A-C]

4. When Clause 12 of the Allotment Letter as noted above prohibits the hirer from subletting the premises or any part thereof, it is the decision of the Chief Administrator which shall be binding on the parties. The relevant portion of Clause 12 in this regard is "You will not sublet the premises or any part thereof. If there is any dispute as to whether the premises have been sublet or not the decision of the Chief Administrator, Chandigarh, on the point shall be binding on the parties". As noted, Chief Administrator in its order dated 04.03.1986 which was passed in the appeal filed by the defendant himself, has concluded that the defendant (respondent herein) was a servant of the hirer. The said decision by clause 12 is final between the parties and it is not open for the defendant to plead contrary to the above. Both the trial court and the High Court have erred in not taking in consideration Clause 12 and finding of the Chief Administrator in its order dated 04.03.1986. The finding of the Chief Administrator dated 04.03.1986 which was passed after the order of the Estate Officer cannot be wished away by the defendant nor can be ignored. [Para 21][1071-D-G]

C.M. Beena and Another v. P.N. Ramachandra Rao, **2004 (3) SCC 595 : [2004] 3 SCR 306 – referred to.**

Case Law Reference

[2004] 3 SCR 306	**referred to**	**para 18**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 814-815 of 2021

From the Judgment and Order dated 06.12.2018 of the High Court of Punjab and Haryana at Chandigarh in RSA No. 35 of 1997 and RSA No. 2610 of 2002.

P.S. Patwalia, Sr. Adv., Tushar Bakshi, Adv. for the Appellant.

Manoj Swarup, Sr. Adv., Mukul Kumar, Adv. for the Respondent. A

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. Leave granted.

2. These appeals have been filed by the appellant challenging the judgment of the High Court of Punjab and Haryana dated 06.12.2018 by which Regular Second Appeal No.35 of 1997 filed by the respondent, the defendant in suit, has been allowed, and the Regular Second Appeal No.2610 of 2002 filed by the appellant has been dismissed and the suits filed by the plaintiff-appellant have been dismissed. B

3. Brief facts of the case which are necessary to be noted are: C

The appellant due to surrender of a temporary stall at Nehru Market was allotted Booth No.186 in Sector 35-D, Chandigarh vide Allotment Letter dated 20.06.1972 issued by the Estate Officer, Chandigarh Administration. The allotment specifically provided that appellant-plaintiff has no right to transfer his rights directly or indirectly. The appellant was restrained from subletting the premises or any part thereof. The building was leased out for cattle poultry feed and for no other purpose. The appellant entered into a partnership deed dated 18.12.1976 with the respondent, Ved Prakash for carrying out the business of cycle repairing etc. in partnership at Booth No.186, Sector 35-D, Chandigarh. The appellant's case is that by notice dated 04.10.1979, the respondent dissolved the partnership and thereafter he became an employee of the appellant in the Booth. D E

4. The Estate Officer, Chandigarh passed an order dated 09.09.1980/15.04.1982 terminating the hire-purchase agreement of the Booth on the ground that the premises are being used in contravention of Allotment Letter dated 20.06.1972. The appellant filed an application before the Chief Administrator, Union Territory, Chandigarh questioning the order dated 15.04.1982 praying that order be declared illegal and wrong. The respondent, Ved Prakash filed an application before the Chief Administrator, in the proceedings claiming him to be occupier of the premises, paying that he may also be made party to the proceedings. By order dated 09.02.1984 passed under Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the Estate Officer directed eviction from Booth No.186. The appeal was filed by the respondent, Ved Prakash before the Additional District Judge, Chandigarh. In the aforesaid appeal F G H

A the appellant also appeared. The appeal was dismissed on 10.06.1985. However, the Appellate Court observed that Booth belonged to the appellant and the respondent, Ved Prakash was in possession as an employee of the appellant.

5. The respondent, Ved Prakash has also filed Appeal No.21 of
B 1984 challenging the order dated 09.09.1980 of the Estate Offider, Chandigarh issued on 15.04.1982 (cancelling the hire-purchase agreement). The Chief Administrator, Chandigarh Administration decided the aforesaid appeal on 13.03.1986 where the Chief Administrator has also noticed that misuse of the premises has been stopped, hence, the premises be restored to hirer-the appellant and the respondent-Ved
C Prakash was also held as servant of the hirer by the Chief Administrator. The respondent also filed Civil Writ Petition No.3115 of 1985 challenging the order of eviction under the Public Premises Act which was dismissed as infructuous on 14.03.1986 by the High Court noticing that the order of resumption has been revoked.

D 6. The appellant being unable to take possession of the premises, he filed Civil Suit No.77 of 1986 impleading the respondent as sole defendant. The appellant's case in the suit was that possession of Booth No.186 was given to the respondent in pursuance of partnership deed dated 18.12.1976. It was pleaded that after restoration of the Booth by Chief Administrator, Chandigarh dated 04.03.1986, the plaintiff-appellant
E became owner of the property and it was further pleaded that the respondent after dissolution of the partnership has been allowed to use the premises as an employee. By notice dated 17.02.1986 the services of the respondent-defendant have been terminated and the defendant was requested to handover the vacant possession of the premises to the
F plaintiff. However, the possession was never restored to the plaintiff till date, the plaintiff prayed for direction of mandatory injunction against the defendant directing the defendant to restore possession to the plaintiff of Booth No.186, Sector 35-D, Chandigarh.

7. The defendant filed a written statement. In the written statement,
G the defendant pleaded that he took the premises on rent from the plaintiff on 18.12.1976 at a monthly rent of Rs.450/- per month. The execution of partnership deed dated 18.12.1976 was admitted but it was claimed as sham document. It was further stated in para 2 of the written statement (reply on merits) that plaintiff has never issued any receipt for the rent and he has been refusing the rent from October, 1982. The
H defendant claimed to be a tenant. The trial court vide its judgment dated

29.02.1992 dismissed the suit. The trial court held the defendant to be a tenant notwithstanding the fact that defendant failed to prove any documents pertaining to the tenancy. The execution of partnership deed dated 18.12.1976 was accepted, however, the trial court observed that the said partnership deed was executed only to avoid the prohibition in hire purchase agreement.

8. Against the order of the trial court appeal was filed by the appellant. The First Appellate Court vide its judgment dated 02.12.1996 allowed the appeal granted the decree of mandatory injunction to the appellant-plaintiff. The First Appellate Court held that there was no material to come to the conclusion that defendant was tenant. The findings of the trial court on the question of tenancy was held to be based on surmises and conjectures. It was held that there was no presumption of landlord and tenant. The First Appellate Court also noticed that the respondent, Ved Prakash appeared as DW-2 and stated that he had maintained accounts books in the business but there is no record regarding payment to the appellant, accounts books were not produced in the Court. Against the judgment of the First Appellate Court, the Second Appeal was filed by the defendant which was allowed by the High Court by impugned judgment dated 06.12.2018. The High Court framed following two questions:

> '(i) Whether the court while adjudicating upon the dispute must go to the route of the case and unearth the evil design by lifting the veil?
>
> (ii) Whether the first appellate court, before setting aside a judgment passed by the learned trial court, is required to analyse the reasons given by the learned trial court and after critical appraisal thereof give its own reasons while disagreeing or setting aside the reasons given by the learned trial court?'

9. The High Court has held that the First Appellate Court wrongly relied upon the order passed by the Chief Administrator. The High Court further observed that the First Appellate Court also misread that before the Chief Administrator the defendant had taken a stand that he was merely a servant, which is against the record. The High Court has further observed that the First Appellate Court has also drawn adverse inference on account of the non-production of the accounts books by the defendant. The High Court held that entire story put forth by the plaintiff does not appeal to the reason. A Regular Second Appeal No.2610 of 2002 was

A filed by the plaintif against the judgment refusing to grant the mandatory injunction directing the defendant for not using the Booth for cycle repairing. The appeal filed by the defendant was allowed setting aside the decree of First Appellate Court. Aggrieved by the aforesaid judgments, these appeals have been filed by the plaintiff-appellant.

B 10. There is no dispute between the parties that Booth No.186 was allotted to the plaintiff-appellant by order dated 20.06.1972. The condition Nos.12, 13 and 19 which are relevant for the present case are as follows:

> "12. You will have no right to transfer your rights under this lease directly or indirectly. You will not sublet the premises or any part
C thereof. If there is any dispute as to whether the premises have been sublet or not the decision of the Chief Administrator, Chandigarh, on the point shall be binding on the parties, no fragmentation of the building be permissible.
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> 13. The building shall be used only for the purpose it is leased out
D cattle poultry feed and for no other purpose.
>
> 19. The undersigned shall have full rights, power and authority at all times to do through his officers or servants all acts and things which may be necessary or expedient for the purpose of enforcing compliance with all or any of the terms conditions and reservations
E herein contained and to recover from you the cost of doing any such act or thing.

11. It is also admitted that a partnership deed dated 18.12.1976 was executed both by the plaintiff and the defendant under which deed it was decided and agreed mutually to carry out the business of cycle
F repairing etc. in Booth No.186. It is relevant to notice that the execution of partnership deed was not disputed by the defendant, Ved Prakash but his case was that he took premises on rent at the rate of Rs.450/- per month on 18.12.1976. The partnership document was termed as sham document by the defendant. In paragraph 2 of the plaint, the plaintiff has made pleading, which was replied in para 2 of the written statement,
G which are as follows:

> "**Para 2 of the Plaint**: That after the taking possession of the said booth the plaintiff earlier started running business under the name and style of M/s Prakash Cycle Store in partnership with the defendant and partnership deed was duly executed between
H the parties on 18.12.1976. Copy of the partnership deed is attached.

Para 2 of written statement: Para 2 of the plaint as stated is wrong and denied. It is stated that the defendant took the demised Premises on rent from the plaintiff on the 18.12.1976 at a monthly rent of Rs.450/- per month. The said partnership deed dated the 18.12.1976 was executed. It was a sham document executed only to save the plaintiff from the rigours of clause 12 of the Allotment Order dated 20.06.1976 in favour of the plaintiff, which lays down that in case of sub-tenancy the booth may be resumed. In fact, the execution of this partnership deed was one of the pre-conditions laid down by the plaintiff for renting out the demised premises to the defendant. Even since the 18.12.1976 the defendant has been in exclusive possession as a tenant and has been paying rent at the rate of Rs.450/- per month. The plaintiff has never issued any receipt for the rent received. The plaintiff has now been refusing rent since October, 1982.

12. As noted above, the premises was resumed by the Estate Officer by order dated 09.09.1980 which was issued on 15.04.1982 on the ground that premises is not being used for the purpose for which it was granted but it was being used for cycle repairing. Against the order dated 09.09.1980 the respondent himself filed an Appeal No.21 of 1984 where the plaintiff-appellant had also appeared and claimed that the defendant is only a servant of the plaintiff. The Chief Administrator allowed the appeal holding that misuse having stopped the allotment be restored to hirer, Madan Mohan Singh. The Chief Administrator also after considering the arguments of the parties came to the conclusion that Ved Prakash was a servant of the hirer. The relevant observations of Chief Administrator are as follows:

"....At the outset the counsel for the appellant has stated that the misuse has been stopped and that the premises in question are now being used for running a shop for the sale of poultry and cattle feed etc. The representative of the Estate Officer has admitted the factum of the removal of the misuse by the appellant. Sh. Kaushal has argued that the appellant has no locus standi for filing this appeal because the appellant is merely a servant of the hirer Sh.Madan Mohan Singh. In support of his contention he has produced before me a copy of the judgment of the Additional Distt. Judge, Chandigarh who dismissed the appeal of Shri Ved Prakash holding the view that the appellant was in possession of the said premises not as a tenant or licencee but only as an

A employee. …… The consideration of argument put forward by Sh. Kaushal and that of the evidence adduced before me by him lead me to conclude that the appellant being a servant of the hirer has no cause of action to agitate the impugned order. Leaving this matter aside and adverting to the main issue involved in this case, I find that the misuse which was the basis for the passing of the impugned order has been removed and the booth is being used for the purpose for which it was sold. I, therefore, do not find any justification to deprive the hirer of this booth to hold back this property. In this back ground the allotment of the booth is restored to its hirer Sh. Madan Mohan Singh. Since the booth had been put to misuse the amount of forfeiture shall stand and should be paid within thirty days reckonable from the date of issue of this order.

Announced in the presence of the parties.

Chandigarh Dated the, Chief Administrator"

4th March, 1986 Chandigarh Administration

Dated : 13.03.86."

13. We may notice one more finding rendered by the Additional District Judge in appeal filed by the respondent against the order passed for eviction under the Public Premises (Eviction of Unauthorised Occupants) Act. The appeal was dismissed by the Additional District Juge on 10.10.1985. However, in paragraph 4 the Additional District Judge has made the following observation:

"4. I have heard and have perused the file. A perusal of the file shows that the booth belonged to Shri Madan Mohan Singh. The said Madan Mohan Singh appeared before the Estate Officer and produced the record to show that the appellant was in possession of the premises as his employee. This position was found to be true by the Estate Officer. Even thereafter a notice was issued to Shri Ved Prakash which was served on him. In appeal a copy of the original affidavit has been placed on the file by the landlord to show that the appellant agreed to work on the premises as an employee on salary of Rs.320/- P.M. In view of the position it becomes clear that the appellant is not in possession of the premises in his own right either as a tenant or a licencee. Rather his possession is only as an employee."

14. We have noticed Clause 19 of the Allotment Order in which, it is the Estate Officer, Chandigarh Administration who has full rights, power and authority for the purpose of enforcing compliance with all or any of the terms, conditions of allotment dated 20.06.1972. It is further relevant to note that Booth was resumed by the Estate Officer by order dated 09.09.1980 (issued on 15.04.1982) on the ground of uses of the premises not for cattle poultry feed but cycle/autorickshaws repairing. The Chief Administrator in his judgment dated 13.03.1986, which order was passed in appeal filed by the defendant against the resumption order, has observed after hearing the argument of hirer that the respondent is only a servant of the hirer. The above observation and finding of the Chief Administrator cannot be wished-away by the defendant as irrelevant. The High Court while referring to the order of the Chief Administrator has only observed that the Appellate Court has misread that defendant had taken a stand that he was merely a servant, which is against the record. When the Administrator has noted the case of the parties and came to the conclusion that defendant was a servant of the hirer, those findings cannot be said to be against the record. The specific findings of the Chief Administrator are "The consideration of argument put forward by Sh. Kaushal and that of the evidence adduced before me by him lead me to conclude that the appellant being a servant of the hirer has no cause of action to agitate the impugned order". Further the Chief Administrator has held that there is no justification to deprive the hirer of the Booth. In view of the order of Chief Administrator dated 13.03.1986, the appellant-plaintiff was clearly entitled to the possession and user of the Booth but when the possession was not handed over by the defendant to the appellant, he had to file the suit for mandatory injunction.

15. The defence which was taken by the defendant before the trial court by filing written statement and by appearing in the evidence was that he is a tenant of the premises which was let out to him on 18.12.1976 at the rate of Rs.450/- per month.

16. We may first notice the finding of the trial court by which trial court held that defendant was tenant of the premises. The trial court framed the Issue No.4, "whether the defendant is a tenant" ? The trial court while answering Issue No.4 recorded the following finding:

> "Therefore, the defendant has to be held to be a tenant in respect of the booth in question notwithstanding the fact that the defendant failed to prove any documents pertaining to the tenancy. Therefore,

A this issue is also decided in favour of the defendant and against the plaintiff."

17. The categorical finding recorded by the trial court is that the defendant failed to prove any documents pertaining to the tenancy. The tenancy is a relationship which is created between two parties. The B agreement of tenancy can be both by writing or oral. Even if there is oral agreement of tenancy, the Court has to look into the circumstances and intention of the parties and other material to conclude as to whether there was any tenancy or not. The present is not a case where defendant claimed any rent agreement. The defendant has come up with a case C that he is paying rent at the rate of Rs.450/- per month. Defendant in his written statement has stated that plaintiff has never issued any rent receipt. Thus, present is not a case where there was any rent receipt filed by the defendant in support of his claim of tenancy. The defendant himself appeared as DW-2. In cross-examination following statement was made by DW-2:

D

"No rent note was written in December, 1976 regarding booth in question. I have no receipt in my possession with regard to payment of rent. I maintain books of account in the regular course of business with regard to the business being carried out in the shop. I cannot produce the account books with regard to the business being done E in the shop. I have not maintain any account with regard to payment of rent to the plaintiff. I have sent the rent by money order to the plaintiff, but the plaintiff never received any money order and I cannot produce any receipt of the money order vide which the plaintiff would have accepted the rent with regard to the premises." F

18. This court had laid down in **C.M. Beena and another vs. P.N. Ramachandra Rao**, **2004 (3) SCC 595,** that conduct of the parties before and after the creation of relationship is relevant for finding out their intention.

G

19. When there is no evidence of taking premises on rent and it is admitted by DW-2 that he had not maintained any record of accounts of payment of rent, there is no base for holding that relationship of landlord and tenant is proved. The trial court itself has held that defendant had failed to prove any documents pertaining to tenancy. The First Appellate H Court, thus, has rightly come to the conclusion that findings of the trial

court that the defendant is a tenant is based on the surmises and conjectures.

20. One more fact to be noticed is that the defendant claimed his tenancy with effect from 18.12.1976. On 18.12.1976, admittedly partnership deed was signed both by the plaintiff and defendant which was before the Court. The defendant had not denied the execution of partnership deed but he wanted to wish-away the partnership deed saying that it was a sham document to save the hirer from rigours of clause 12 of the Allotment Order. When the parties signed a document and entered into a partnership deed, they cannot wish away the consequences which flow from the signing of deed. The plaintiff having categorically denied the tenanacy and there being no evidence with regard to the tenancy, we do not find any error in the judgment of the First Appellate Court that defendant was not a tenant of the premises. We do not find any error in the judgment of the First Appellate Court holding that defendant was not a tenant of the premises.

21. When Clause 12 of the Allotment Letter as noted above prohibits the hirer from subletting the premises or any part thereof, it is the decision of the Chief Administrator which shall be binding on the parties. The relevant portion of Clause 12 in this regard is "You will not sublet the premises or any part thereof. If there is any dispute as to whether the premises have been sublet or not the decision of the Chief Administrator, Chandigarh, on the point shall be binding on the parties". As noted above, Chief Administrator in its order dated 04.03.1986 which was passed in the appeal filed by the defendant himself, has concluded that the Ved Prakash-defendant (respondent herein) was a servant of the hirer. The said decision by clause 12 is final between the parties and it is not open for the defendant to plead contrary to the above. Both the trial court and the High Court have erred in not taking in consideration Clause 12 and finding of the Chief Administrator in its order dated 04.03.1986. The finding of the Chief Administrator dated 04.03.1986 which was passed after the order of the Estate Officer cannot be wished away by the defendant nor can be ignored while deciding the question as to whether the premises were sublet to the defendant or not.

22. We may also notice that the High Court while deciding the Regular Second Appeal filed by the defendant has also decided Regular Second Appeal filed by the appellant-plaintiff which arose from the Suit No.77 of 1986 filed by the plaintiff seeking relief for permanent and

A mandatory injunction, restraining the defendant from using the Booth No.186 for cycle repairs. The Regular Scond Appeal No.2610 of 2002 filed by the plaintiff-appellant has also been dismissed. In view of our decision that Suit No.77 of 1986 filed by the appellant deserved to be decreed and had rightly been decreed by the First Appellate Court, the judgment of the High Court in RSA No.2610 of 2002 is of no avail.

B

23. In view of the foregoing discussions, we allow these appeals and restore the judgment of the First Appellate Court dated 02.12.1996. The Estate Officer, Chandigarh Administration shall ensure that the appellant is immediately put in possession of the premises of Booth No.186. It shall be open for the appellant to take appropriate proceedings to recover the damages and mesne profit for the use of premises by the defendant. The appeals are allowed with costs.

Ankit Gyan Appeals allowed.