



C. I.

Opening Sheet For Revenue Appeals

IN THE COURT OF THE DEPUTY COMMISSIONER SBS NAGAR, EXERCISING THE POWERS OF COLLECTOR.

Appellate side	Revenue Case No.		OF 19
District	Date of filling Pention	Whether received from Appellant in person, or by pleader of or Agent	Stamp on Pention of appeal
Shahid Bhagat Singh Nagar (Nsr)	6-9-2010	sh. Desh Bandhu Bhalla Advocate, Nawanshaher counsel for appellant	Rs. 10/-

Karnail Singh s/o Chanan Singh r/o village Sotran, tehsil Nawanshaher Distt. SBS Nagar. -----Appellant.

Versus

smt. Chand Rani w/o sh. Nand Kishore r/o Azad chok ^{Village} Banga through her attorney sh. Tajinder Kumar s/o Seth Dhanpat Rai r/o Lakkar Mandi Doraha, Distt. Ludhiana. _____ Respondent.

Appeal from the order of sh. Bir Pal Singh, SDM & A.C. Ist gr Nawanshaher.

.....dated.....13rd day of August 2010.

Claim: To accept the appeal and to set aside the impugned order under appeal on the grounds ~~xxx~~ mentioned hereinbel while dismissing the ejection application with costs throughout. PTO---2

Grounds of appeal (translated) :-

Handwritten notes:
13/9
mt. per preliminary hearing on 14/9
[Signature]

Handwritten notes:
stay order
5/10

GROUNDS OF APPEAL

1. That the impugned order is against law & facts of the case, and is based on surmises.
2. That the trial court has failed to appreciate various legal and factual defences raised by the appellant before the trial court. The defences raised by appellant has not been appreciated in proper perspective.
3. That the hon'ble trial court failed to appreciate that the ejection application is factually & legally not maintainable due to the principles of resjudicata. It is a admitted position that earlier on such like application on the same cause of action was made, which has since been dismissed as withdrawn, as is self revealing from the judgement/order dt.10-10-2008 Ex.A4 on the file which is clear that the earlier ejection application has since been dismissed as withdrawn. On application to seek permission to file a fresh proceedings on the same cause of action moved by the respdt, the hon'ble trial court's predecessor in interest passed the order that respdt is at liberty to file a fresh application as provided under the law, but refused to pass a order allowing withdrawl of the ejection petition with permission to file a fresh ejection petition on the same cause of action. No law allows filing of fresh application on the same cause of action which has since already been dismissed. Had this established view of law been appreciated the trial court should have held that this ejection application is hit by principle of resjudicata.
4. That it is proved on the record that for the last so many years respdt Chand Rani has not returned to India ~~available~~ to ~~appear~~ collect rent despite appellant being always ready to pay the same. In the absence and non availability of respdt Chand Rani the appellant has a valid reason for not making the payment of rent. The hon'ble court's holding that once I had already deposited rent, therefore I should have again deposited the rent even if the respdt is not available, is contrary to factually & legal position, as it is an established law that if landlord/landlady is not available to collect rent then in no way tenant can be held to be guilty of non payment of rent. There is sufficient evidence on the file that neither Chand Rani was available in India to receive the rent nor she had deputed

any agent with information to appellant to give rent to him nor she ever served notice upon the appellant to collect the rent, therefore the appellant have sufficient reason for non-payment of rent to the ~~appellant~~ respdt, who is settled in America since 1992/93. The citations reported in 1991(2) Recent revenue reports of FC Punjab at page -93, and of 1999(2) RCR(C)-169 of FC Haryana has not been appreciated, despite being quoted.

5. That the hon'ble trial court failed to appreciate that in the face of judgement & decree dt.21-4-1990 Ex.R2 & R3, no ejection of appellant from the premises in question can be ordered as the appellant has blanket decree holding the appellant to be in possession of the premises in question and the defdts including the respdt were restrained from interfering in the possession of appellant and from dispossessing him therefrom. In the face of this judgment & decree which has attained finality the respdt cannot seek the ejection of the appellant. On the basis of this decree proceedings of contempt are already pending in the civil court at Nawanshaher. The contents of this judgement & decree are self revealing that the appellant is a tenant over the suit land & since 1965. Both defdt No.1 of that suit Harbans Lal and respdt who was defdt No.2 in that suit, has been stated ~~to be successor of~~ that respdt is the successor of said Harbans Lal on account of sale of land in favour of respdt. Both Harbans Lal as well as Chand Rani denied the possession of appellant over the suit land as tenant and despite that the hon'ble court of sh. S.C.Marwaha the then SJIC Nawanshaher granted appellant the said decree. Once the respdt denies the status of appellant before the civil court in particular, the respdt is estopd to file this ejection petition on any of alleged grounds. Reference was made to a citation of Division Bench of P&H High Court in case, Ram Kishan & others V/s. Mast Ram & others reported in Latest Judicial Reports(revenue) 1950 to 1988 at page 851 decided on 26-8-1985 where it is held that, "Expression sufficient cause for failure to pay rent regularly. In civil litigation land owner did not accept status ^{defdt} of ~~appellant~~ as tenant on the disputed land. Moreover possession of tenant also not admitted, tenants have sufficient cause for failure to pay rent." This judgement

has not been appreciated by the ld. trial court in proper perspective. In the said suit not only the respdt deny the appellant to be her tenant but also denied the appellant to be in possession of the suit land and ^{also} in the face of pendency of proceedings u/o. 21-rule 32 CPC in lieu of said judgement & decree, this ejection application is factually and legally should not have been accepted by the ld. trial court.

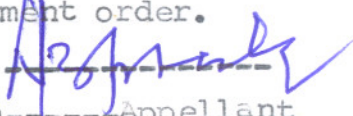
6. That the ld. trial court has failed to appreciate that there is no statement of the applicant on the file and the statement of alleged attorney in no way can be said to be statement of the respdt, as when he submitted his affidavit in examination in chief and when he was cross examined on 18-8-2009, no power of attorney or its copy was on the file to prove his status of being attorney of respdt. Not only this it was clearly recorded on the file on 18-8-2009 itself by the statement of counsel of appellant that no such attorney has been placed on the file despite it being alleged as Ex.A1 and therefore obviously due to non availability of the same, no cross examination qua that was done and therefore now the copy of same cannot be filed on the file as Ex.A2 and this matter was kept open and has not been adjudicated through the impugned order by the ld. trial court despite being pointed out. Infact there is no statement of the respdt on file in the stated circumstances.

7. That the trial court failed to appreciate that due to non providing of water for irrigation by respdt and due to non availability of water, the appellant could not sow the land and there is valid ground for not sowing the land by appellant. All this has not been appreciated by the trial court.

8. That the all citations referred by respdt, in the circumstances no way fits into the present petition and therefore cannot be appreciated in the context of this case.

9. That the ld. trial court has errored by stating that warrant of possession of land be issued in favour of respdt after the expiry of limitation to file appeal, when such observations/orders cannot be passed till there is prayer for execution of ejection order.

Dt. 3-9-2010.

Submitted by: 
Karnail Singh-----Appellant

Through
Desh Bandhu Bhalla Advocate,
Nawanshaher.

