

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 4451 OF 2009

SHRIKANT

Appellant(s)

VERSUS

NARAYAN SINGH (DEAD) THR. LRS. & ORS.

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

(1) This appeal arises out of judgment and order of the Madhya Pradesh High Court, Indore Bench, in Second Appeal NO.303 of 1998 dated 29th September, 2005 and also review petition, M.C.C. NO.1258 of 2005 dated 27th January, 2006, in and by which the High Court has held that the quit notice issued by the appellant-landlord was defective and hence the appellant is not entitled to seek for eviction.

(2) We have heard learned counsel for the parties and also perused the impugned judgment and the evidence and the materials on record.

(3) The appellant herein has filed a suit for eviction and recovery of rent of Rs.2700/- per month. The Trial Court decreed the suit and ordered eviction of the respondent(s). The Trial Court recorded the finding that there is landlord-tenant relationship and also held that the quit notice was a valid notice. The Trial court further directed the respondent to pay mesne profits/rent for a period of three years prior to filing of the suit.

(4) Being aggrieved by the judgment passed by the Trial Court, the respondent filed appeal before the First Appellate Court. The First Appellate Court allowed the appeal filed by the respondent(s) holding that the appellant has not proved the landlord-tenant relationship and that the first respondent is the tenant under the appellant. Be it noted that the validity of the termination notice was, however, upheld by the First Appellate Court.

(5) Being aggrieved by the judgment of the First Appellate Court, the appellant preferred second appeal before the High Court. In the second appeal the High Court has formulated/framed the following substantial questions of law which read as under :

"1. Whether the plaintiff appellant is entitled to a decree for possession of the suit premises on the basis of admission of title of the plaintiff by the

defendant in the light of the principle laid down by Hon'ble Supreme Court of India in the judgment reported in 1966 SC 735?

2. Whether the first appellate court erred in rejecting the document Exhibit P-1 evidencing the tenancy of respondent No.1 Narayan Singh without any legal basis?"

(6) While deciding the second appeal, it appears that the High Court has not answered the substantial questions of law framed by the High Court; but the High Court has examined the question as to the validity or otherwise of the quit notice (Exhibit P-2) dated 5th August, 1976 sent by the appellant to the respondent(s) and the High Court observed that the quit notice was defective. The validity of the quit notice (Exhibit P-2) was not an issue before the High Court nor any question of law was framed on the same. In our considered view, the High Court ought to have examined the substantial questions of law framed by it and answered the same in accordance with law. In such view of the matter the impugned order is not sustainable and the matter has to be remitted back to the High Court.

(7) The appeal is accordingly allowed and the impugned orders passed in Second Appeal No.303 of 1988 and M.C.C. NO.1258 of 2005 are set aside. The matter is remitted back to the High Court for considering the same afresh after affording sufficient opportunity to both the parties. We make it clear

that we have not expressed any opinion on the merits of the matter. No costs.

.....J.
(R. BANUMATHI)

.....J.
(INDIRA BANERJEE)

NEW DELHI,
OCTOBER 23, 2018.