



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE GAJENDRA SINGH

MISC. PETITION No. 2289 of 2023

RIZWAN KHAN

Versus

***M/S FIRM JADAVCHAND INDERMAL AND SONS THROUGH RAJENDRA
KUMAR AND OTHERS***

Appearance:

Shri Pourush Ranka, learned counsel for the petitioner.

Shri Vinay Gandhi, learned counsel for the respondent no.2

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RESERVED ON : 12.08.2024

PRONOUNCED ON : 17.09.2024
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ORDER

This Misc. Petition under Article 227 of the Constitution of India is preferred challenging the legality of order dated 05.04.2023 in RCS-A/66-A/2016 by IIIrd Civil Judge, Senior Division, Mandsaur, District – Mandsaur (M.P.) whreby the objection of the defendant/respondents/tenant has been sustained and the petitioner/plaintiff/landlord has not been allowed to exhibit the *Kiraya Chitti* tendered in evidence on the ground that tendered document requires registration and the same is not registered.

02. Facts of the case in brief are that the petitioner/plaintiff/landlord filed the civil suit for eviction and recovery of arrears of rent asserting that the defendent is the tenant of the accomodation since 01.07.1981 and the existing rent is Rs.4,000/-



per month. It is also submitted that the said accommodation has been purchased by the plaintiff vide registered sale deed dated 02.08.2010 and the defendant is the tenant of plaintiff. The defendant/respondent filed the written statement admitted the contents of paragraph 4 of the plaint that the defendant no.1 executed the *Kiraya Chitti* in favour of Saiffuddin but expressed the ignorance regarding the execution of sale deed by Saiffuddin. The present respondent/defendant has specifically denied that the plaintiff/petitioner is landlord of the suit accommodation. During the course of examination of plaintiff he tendered the documents executed by the defendant/respondent in favour of Saiffuddin which is Annexure-P/5 and defendant/respondent objected for admission.

03. The trial court sustained the objection and denied the admission of the Annexure-P/5 on the ground that the *Kiraya Chitti* is for the period of more than 1 year and it requires registration. The same is not registered so that is not admissible in evidence.

04. The impugned order has been challenged on the following grounds:-

(a) The impugned order passed by the learned trial Court is illegal, improper and arbitrary and against the settled principles of law.

(b) The learned trial Court has committed grave error of law and facts on record by not giving any reasoning while passing the impugned order and has merely referred to the judgment without ascertaining its applicability in the peculiar facts and circumstances of the present case and hence such order cannot be sustained in the eyes of law as the reasoning of any order is considered as heart and soul of the order and in absence of speaking order the same deserves to be set-aside.

(c) The learned trial Court has committed grave error of law and facts on record by not considering the fact that the rent note was admissible in evidence and was not required to be registered under any law and without considering the rent note in correct perspective the



impugned order was passed in an arbitrary and slipshod manner.

(d) The learned trial Court has failed to consider the fact that the rent note was executed between the respondent and the predecessor of petitioner and the said rent note is very crucial for the purposes of establishing the relationship of landlord and tenant and hence by depriving the petitioner from exhibiting the said crucial documents will have an adverse effect on the interest of the petitioner.

(e) The learned trial Court has failed to consider that the objection raised by the respondent does not hold any water as the rent note was not required to be registered as the same was executed for a year and thereafter the tenancy has become monthly.

(f) The other grounds would be urged at the time of final hearing of the case.

05. Learned counsel for the respondent has opposed the prayer and submitted that the order does not require interference.

Heard.

06. Annexure-P/1 was executed on 01.07.1981 for a period of 1 year and condition no.7 is reproduced as under:-

“आपको मकान खाली कराने की आवश्यकता हो तो १५ दिन पहले सूचना मिलने पर मकान खाली कर दूंगा उसमें किसी तरह की देरी नहीं करूंगा, वर्षा का समय होने पर भी किसी तरह का विरोध न करूंगा। ”

07. As per Section 107 of the Transfer of Property Act, a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. Question arise which lease can be termed as year to year.

“Where the lessor has no right to determine (terminate) a lease at the end of a year without giving notice, the lease is from year to year. That is to say, a lease from year to year is continuing



lease. Unless terminated by a notice to quit, the lease from year to year may last indefinitely. Such lease arise by operation of law whenever a person is in possession of an immovable property with the permission of landlord and such person pays the rent yearly.”

08. On perusal of *Kiraya Chitti* in the light of condition no.7 and the fact that the lease renewed continuously, the Exhibit-P/5 is a lease for year to year and it requires registration. Thus, the findings of the trial Court is correct that registration of lease is required.

09. Now, the question arise whether the trial Court was justified in denying the admission of lease deed in total.

10. The Hon'ble Apex Court in the case of *M/s Paul Rubber Industries Private Limited v. Amit Chand Mitra & Anr., 2023 INSC 854* clarified the interpretation of Section 49 of the Registration Act, 1908. The Court held that an unregistered lease deed can be admitted as evidence to demonstrate the “nature and character of possession” only when it is not the main term of the lease and is not the primary dispute before the court.

11. In this case, the respondent has asserted in paragraph 5 of the written statement that he is the tenant of Saiffuddin and Saiffuddin has received the rent from July, 2011 to September, 2011 from the defendant and has provided the receipt. Accordingly, in the current matter, deed can be admitted as evidence to depict the 'nature and character of possession' only.

12. Hence, in view of the above discussion, this Misc. Petition stands *disposed of*.

C.C. as per rules.

(GAJENDRA SINGH)
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