

Mohd. Yunus

Vs

Gurubux Singh

Civil Appeal No. 4496 of 1985

(S. Mohan, M. K. Mukharjee JJ)

17.02.1994

ORDER

1. To ward off the allegation of non-payment of rent, the appellant pleaded that the rent had been sent by money-orders in the name of respondent - Gurubux Singh. In support of this, he produced Exhibit-E series together with Exhibit-C series. The High Court found, reversing the concurrent findings, these Exhibits would merely establish the name of the addressee - Gurubux Singh but there is nothing to indicate that it was addressed to the respondent - Gurubux Singh since the address of the respondent was not found in any one of the these documents. On the score, it has directed eviction.

2. It is argued before us that the High Court was not correct in interfering with the factual findings under Section 100 of CPC. In any event, there is Oral evidence of the appellant-tenant who has categorically stated that the money-orders were sent to Gurubux Singh -the respondent herein. We are unable to agree with either of the submissions. Where there is a gross misappreciation of evidence which goes to the root of the matter, certainly the second appellate court can exercise its jurisdiction. Here the documents which are relied on by the appellant do not show that it was addressed to the respondent - Gurubux Singh. In order to establish the same, the postman should have been examined. The High Court is right in its conclusion. As regards the next contention, the mere ipse dixit, even without any cross-examination by this Court of the appellant, will not establish that the money-orders were addressed to the respondent. The evidence in this behalf is lacking. The appeal stands dismissed. No costs.

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