

**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

**Regular Second Appeal No.51 of 2011 (O&M)**

**Date of decision: 2.7.2015**

Jang Bahadur and others

**... Appellants**

**Versus**

Brijesh Kumar

**... Respondent**

**CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

**Present:** Mr.R.S.Budhwar, Advocate,  
for the appellants.

Mr.Gorakh Nath, Advocate,  
for the respondent.

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

**RAJIV NARAIN RAINA, J.**

The plaintiff asserted his right to recover possession of the demised shop by filing a suit for possession and for recovery. The defendants contested and argued before the trial Judge that the suit was not maintainable as plaintiff should have filed a suit for possession by way of redemption of mortgage. Defendants # 1 and 2 are brothers. In the written statement filed by the defendants in response to the suit, they denied execution of any mortgage deed. While in the witness box facing cross-examination one of the defendants admitted that both the brothers are tenants under the plaintiff. The question that arises is that could they be

allowed to change their stand by resting their case on a mortgage deed between the owner and defendant # 1. It is trite law that it is not open to a tenant by a unilateral act to alter the character or status of the relationship.

2. For the period of non-payment of rent, the defendants have failed to place on record rent receipts to establish and prove payment of rent up to September, 1996. There is no doubt that there is a mortgage deed exhibited on record as P1. But there is evidence that the plaintiff redeemed the mortgage with defendant # 1 on deposit of mortgage money in a sum of ₹ 2000/- vide treasury challan Ex.P11.

3. The defendants then argued that the plaintiff is not owner of the disputed shop. Rather, the shop rented out to the defendants belongs to Kali Ram Dharamshala. Not to speak of tenant precariously disputing ownership in the shop, not an iota of evidence was led by the defendants to prove that the plaintiff was not owner of the demised premises. Mere assertion is not enough to non-suit the plaintiff. The situs of the shop in dispute at Bilaspur confers territorial jurisdiction on the trial court over the suit property as there is no Municipal Committee notified for the area and therefore the rent laws are inapplicable. Indisputably, the area of the shop falls within the jurisdiction of a Village Panchayat. Therefore, the only possible way available to the plaintiff for recover possession by ejectment of the defendants from the shop in question was to bring a lawsuit in the civil court. The suit was instituted after notice issued on 27<sup>th</sup> November, 1996 under Section 106 of the Transfer of Property Act, while civil suit # 11 of 1997 was filed on 10<sup>th</sup> January, 1997. If the tenancy was created in the year 1989 in favour of one or both the brothers and thereafter one of them

shifted out from the premises in October, 1990 relocating from Bilaspur to Mulana while his brother Raj Kumar defendant # 2 continued in possession of the tenanted shop, then the decree cannot be faulted in evicting the tenants on quit notice issued and served when statutory defences and not extended to properties falling in Panchayat Samities. One suit was sufficient to non-suit both the brothers.

4. The plaintiff and defendant # 1 were once governed by registered mortgage deed Ex.P1 dated 1<sup>st</sup> February, 1989 and it was agreed that defendant # 1 would redeem the same as and when requested by the plaintiff on payment of mortgage money. The mortgage money has been paid and, therefore, the mortgage stands redeemed qua defendant # 1 but defendant # 2 his brother, continued in possession of the suit premises. Nevertheless, when both the brothers own up their status as tenants and one has walked out of the shop to settle elsewhere, the decree cannot be faulted with respect to either of them or to save one or the other.

5. Notably, the tenancy was terminated firstly by notice and then by instituting suit. The rent law protections were not available to both the brothers. Therefore, the plaintiff was not bound by law to plead a ground of eviction as are recognized in the Haryana Urban (Control of Rent and Eviction) Act, 1973. Besides, the defendants are estopped from questioning the ownership of the plaintiff as law does not permit on the facts of this case. After all, tenants will remain tenants and landlords; landlords, all things being equal.

6. Nothing else remains to be examined or understood in the simplicity of the facts presented in this case. I have no reason whatsoever to

interfere with the just and proper dispensation handed down by both the courts below in their findings recorded after appreciating the evidence on file and would dismiss the appeal.

7. In doing so, each of the directions issued by the courts below and as decreed will continue to operate so far as the payments and adjustments of money are concerned. The details of payment of deposit as per interim orders of this Court dated 9<sup>th</sup> February, 2015 are taken on record. So also the affidavit filed in terms of the earlier dated 20<sup>th</sup> April, 2011 passed by this Court calling upon the appellant to show that the entire amount of mesne profits has been deposited is taken on record.

8. This court in second appeal is not to make any comment on the receipts as they would remain open for production and proof in the executing court to execute the remainder of the decree by either side. This court has expressed no opinion on them. It may be noted that vide order dated 20<sup>th</sup> April, 2011, dispossession was stayed till the next date of hearing subject to the appellant depositing a sum of ₹ 1000/- per month with effect from the date of the decree passed by the court below for use and occupation of the property and defendants would continue to pay the same before the executing court by 10<sup>th</sup> day of each month subject to adjustments. The present respondent-shop owner was entitled to withdraw the amount subject to final decision of the case. The amounts will be his absolutely with the dismissal of the appeal. It may be noted that the legal representatives of decedent Raj Kumar-appellant # 2 were brought on record on 5<sup>th</sup> September, 2011. The interim stay dated 20<sup>th</sup> April, 2011 continued on 5<sup>th</sup> September, 2011 and 22<sup>nd</sup> February, 2012, needless to say, stands vacated. The

Miscellaneous Applications, if any pending, stand disposed of with the main order.

**(RAJIV NARAIN RAINA)**  
**JUDGE**

**July 2, 2015**  
Paritosh Kumar