

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

- 1) RSA No.4128 of 2012 (O&M)
- Parminder Grewal through her LRsAppellants
- Versus
- Manjit SinghRespondent
- 2) RSA No.4518 of 2012 (O&M)
- Parminder Grewal through her LRsAppellants
- Versus
- Bawa RamRespondent
- 3) RSA No.4528 of 2012
- Parminder Grewal through her LRsAppellants
- Versus
- Bakshish SinghRespondent
- 4) RSA No.4529 of 2012
- Parminder Grewal through her LRsAppellants
- Versus
- Kabul SinghRespondent

Date of Decision: 21.05.2015

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr. Arun Singla, Advocate,
for appellants.

Mr. Vivek Salathia, Advocate for
Mr. Vikas Gupta, Advocate,
for respondent.

SHEKHER DHAWAN, J

Present regular second appeals against judgments and decrees dated 02.06.2012 passed by Additional District Judge, Tarn Taran whereby appeals against judgments and decrees dated 22.09.2009 passed by Court of Additional Civil Judge (Senior Division), Patti, appeals were accepted.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Detailed facts of the case have already been recapitulated in the judgments of both the Courts below. However relevant facts for the purpose of decision of appeals that plaintiff-appellant Mrs. Parminder Grewal had filed suits for ejectment of defendants from different shops with open space. As per plaintiff, she is the owner of the disputed shops and same were let out to defendants @ Rs.300/- per month about four years back. Tenancy was oral tenancy coupled with delivery of possession. Defendants failed to make the payment of rent from 01.04.2000 till the date of filing of the suits. Defendants carried out material alterations in the suits property without consent of the landlord. The behaviour of defendants was not good. Legal notices under Section 106 of the Transfer of Property Act were served and despite that possession of the shops were not vacated.

4. Defendants contested the suits, taking the legal plea that suits are not maintainable and plaintiff has no locus standi to file the suits. More so, the plaintiff is estopped by her act and conduct from filing the present

suits. As per defendants, they were in possession of suit properties and the same was open, hostile, continuous, without any interruption and known to the plaintiff and for the last more than 12 years and as such the defendants had become owners of the disputed properties by way of adverse possession. There were no relationship of landlord and tenants between the parties. Defendants raised construction of shops w.e.f. 10.09.1982 by spending huge money. Defendants took the plea that no notices under Section 106 of Transfer of Property Act were served upon them.

5. Defendants also filed counter claims with the plea that they had become owners by way of adverse possession and plaintiff was threatening to dispossess them from the suit properties for which she has no right. On these facts, the Court of first instance settled the following issues:

1. Whether the shop in dispute was given to the defendants on rent @ 300/- about four years ago? OPP
2. Whether there exist relationship of landlord and tenant between the parties? OPP.
3. Whether plaintiff is entitled to decree of ejectment, as prayed for? OPP.
4. Whether suit is within limitation? OPP.
5. Whether plaintiff has got locus-standi to file the present suit? OPP
6. Whether the plaintiff is estopped by her own act and conduct from filing the present suit? OPD.
7. Whether suit is bad for non-joinder of necessary parties? OPD.
8. Whether defendant has become owner of the disputed property by way of adverse possession? OPD.
9. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP
10. Whether the respondent is liable for ejectment from the disputed shop on the grounds of non payment of rent? OPP

11. Whether the plaintiff is entitled for mesne profit @ Rs.600/- for use and occupation of the suit land? OPP.
12. Whether the tenancy has been terminated vide legal notice under Section 106 of the Transfer of Property Act? OPP
13. Whether the defendant is entitled to the relief of declaration in the counter claim? OPD.
14. Relief.

6. Court of first instance after appreciating the evidence available on file, returned the findings and decreed the suit of plaintiff and counter claims were dismissed. Plaintiff was held entitled to recover arrears of rent along with pendente lite and future interest @ 12% per annum and for recovery of mesne profit and for possession of disputed shops as well. Defendants preferred the appeals before Court of first appeal but remained unsuccessful and as such present Regular Second Appeals before this Court.

7. First Appellate Court accepted the appeals on the point that legal notices under Section 106 of Transfer of Property Act were not served upon the defendants and as such the suits of plaintiff were dismissed and appeals were accepted. Being aggrieved by said judgments, the plaintiff is in appeals before this Court.

8. Having considered the submissions made by learned counsel for appellant, this Court is of the considered view that following substantial question of law is involved in this case:

“Whether legal and valid notice under Section 106 of Transfer of Property Act was served upon defendant or not ?”

9. At the time of arguments, Mr. Arun Singla, learned counsel for plaintiff-appellant took the plea that legal and valid notices were issued under Section 106 of Transfer of Property Act. The postal receipts of the

same are Ex.P-3 and acknowledgments dated 17.05.2002 is Ex.P-4 vide which legal notice of 15 days were given. Even if it is taken that legal notice of 15 days were not given in these cases, as per amended provisions of Section 106 of Transfer of Property Act, even notice of short period can be considered as a valid notice. The said provisions of law are having retrospective effect.

10. While arguing on this point, Mr. Vivek Salathia, learned counsel for respondent took the plea that legal and valid notices have not been given, as the period of notices were to expire on 01.06.2002. The amendment had come in force w.e.f. 31.12.2002, whereas the suits were filed on 16.07.2002. So, the same would not be applicable. More so, this plea was not taken before the Courts below and the same cannot be taken during the second appeals. So the appeals are without any merit and same be dismissed.

11. Having considered the rival contentions on substantial questions of law, this Court is of the considered view that plea regarding validity of notice is legal plea and can be taken even during the course of argument in second appeals before this Court.

12. Now coming to the main controversy whether legal notices were served or not. For ready reference, the amended provisions of Section 106 of Transfer of Property Act are being reproduced as under:

“Duration of certain leases in absence of written contract or local usage-

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for

any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.”

13. Similar matter had gone before Hon'ble Apex Court in case **Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF) 2008 (2) SCC 728**, wherein Hon'ble Apex Court held that in such like cases tenancy would stand terminated under general law on filing of a suit for eviction and even if assuming the fact that notice terminating the tenancy was not served upon the appellant (though it has been served in the present case) the tenancy would stand terminated on filing of the subject suit against the appellant/defendant. The present suits were filed before Court of first instance on 16.07.2002. The said amended provisions of the Act were having retrospective effect. More so, as per provisions of Order 7 Rule 7 of Code of Civil Procedure, can then take notice of subsequent events i.e. expiry of 15 days after receipt of a notice.

14. In these cases both the Courts below have recorded the finding

that notices were duly received by defendants also. More so, the filing of suits itself can be taken, as a notice for terminating tenancy and as such the tenancy of the defendants-tenants stood terminated and appellant is liable to hand over the possession of the tenanted premises. Such a view was taken by Hon'ble Delhi High Court in case **M/s Jeevan Diesels and Electricals Ltd. Vs. M/s Jasbir Singh Chadha (Huf) and another 2011(2) RCR (Rent) 394**, where identical matter was pending.

15. As regards to the service of notices in the present cases, the Courts below have recorded the finding that notices were duly served and were sent at the correct addresses and in case the same were not received, the defendants were bound to take the plea that the notices were not served. But there is no such evidence from tenants side and a valid presumption can be qua service of legal notices. More so, as per law laid down by Hon'ble Supreme Court in case **Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF) 2008 (2) SCC 728** (supra), tenancy stands terminated under general law on filing a suit for eviction. As per law laid down by Hon'ble Supreme Court, if assuming that the notice was not served upon the defendant, though it has been served, the tenancy would stand terminated on filing of the subject suit.

16. Such a view was taken by Hon'ble Delhi High Court in case **Nanak Ram Jaisinghani Vs. Tilak Raj Salooja and others in RSA 131/2013 decided on 20.01.2014**. Appeal was filed against said judgment before Hon'ble Supreme Court and the Special Leave to Appeal was declined by Hon'ble Supreme Court on 05.05.2014.

17. The intention of legislature that technicalities are not to be considered in view of the amendments brought in Section 106 of the

Transfer of Property Act by Act 3 of 2003 and as per Amendment no objection with regard to termination of tenancy is permitted on the ground that the legal notice as long as a period of 15 days was otherwise given to the tenant to vacate the property. The intention of Legislature is therefore clear that technical objections should not be permitted to defeat substantial justice and the suit for possession of tenanted must succeed if the tenant has a period of 15 days for vacating the tenanted premises.

18. In view of the above, substantial question of law stands answered in favour of appellant. Present Regular Second Appeals accepted and the judgments and decrees passed by the Court of first appeals dated 02.01.2012 stands set aside. Judgments and decrees passed by Court of first instance dated 22.09.2009 stands restored and suits of the plaintiff decreed in terms of the said decrees.

(SHEKHER DHAWAN)
JUDGE

May 21, 2015
msd