

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

R.S.A.No.451 of 2013 (O&M)

Date of Decision: January 28, 2015

Estate Officer, Excise Area, Ambala Cantt & another

...Appellants

Versus

Inder Kumar Jain & another

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

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

Present: Mr.Vinod S. Bhardwaj, Advocate,  
for the appellants.

Mr.Yesh Paal Malik, Advocate,  
for respondent No.1.

None for respondent No.2.

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**AMIT RAWAL, J. (Oral)**

CM Nos.1241-42-C of 2013

For the reasons mentioned in the applications, which are supported by affidavits, the delay of 226 days in filing and 557 days in re-filing the appeal is condoned.

C.Ms stand disposed of.

R.S.A.No.451 of 2013 (O&M)

This is a Regular Second Appeal at the instance of the appellant-defendants against the judgments and decrees of both the Courts below, whereby the suit of the respondent-plaintiffs for seeking declaration

to the effect that the notice dated 23.12.1999 in respect of property No.126, known as "Parry's Hotel", situated at Staff Road, Ambala Saddar (hereinafter referred the "suit property") is illegal, wrong, null & void, had been decreed. The notice has been declared to be wrong, illegal, null & void and has been set-aside and consequently the appellant-defendants have been restrained from acting upon the above-said notice as well as interfering into the possession of the respondent-plaintiffs over the suit property.

Mr.Vinod S.Bhardwaj, learned counsel appearing for the appellant-defendants, in support of his grounds of appeal, submitted that both the Courts below have committed an illegality and perversity in decreeing the suit as the respondent-plaintiffs had violated the terms and conditions of the allotment. Though the respondent-plaintiffs were not original allottees, but have stepped into the shoes of the allottee and, therefore, the substantial questions, as culled out in the grounds of appeal, are liable to be answered in favour of the appellant-defendants.

Shri Yesh Paal Malik, learned counsel appearing for respondent No.1, in support of his case, submitted that the trial Court, after appreciation of the oral and documentary evidence, much less, the principles of natural justice decreed the suit and declared the notice as null & void on the ground that the appellant-defendants failed to cross-examine the witnesses of the plaintiffs and in the absence of cross-examination, the statements of the witnesses are deemed to be admitted. In support of his submission, he has relied upon judgment in **Rajinder Pershad (dead) by L.Rs Versus Darshana Devi, 2001(3) Civil Court Cases (SC) 622.**

The trial Court also found that the appellant-defendants failed

to prove the document (Ex.DW1/3) by relying upon the judgment of the Hon'ble Supreme Court in **Sait Tarajee Khimchand and others Versus Yelamarti Satyam and others**, AIR 1971 SC 1865 that mere exhibition of the document does not dispense with its proof.

I have heard the learned counsel for the parties and appraised the impugned judgments and decrees of both the Courts below and is of the view that the appeal deserves to be dismissed.

It is a matter of record that the appellant-defendants did not cross-examine the witnesses of the respondent-plaintiffs nor proved the documents in support of their case. The judgment cited (supra) squarely cover the case of the respondent-plaintiffs and the ratio decidendi need not be discussed to avoid repetition. The appellant-defendants would be well within their right to issue the notice in accordance with law, if any, much less in case the respondent-plaintiffs are found to have violated the terms and conditions, after due compliance of the procedure prescribed. The findings rendered by both the Courts below do not suffer from any illegality and perversity and have rendered the finding of fact and law after appreciating the oral and documentary evidence on record. No fault can be found with the aforementioned findings. No substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

**January 28, 2015**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**