

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

RSA No.146 of 2015(O&M)

Date of Decision:-27.02.2015

Chaman Lal Khunger & Anr.

.....Appellants.

Versus

Harnam Singh & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Gaurav Grover, Advocate for the appellants.

JASWANT SINGH, J.(ORAL)

Defendants are in second appeal aggrieved against the judgment and decree dated 17.09.2014 passed by the learned Additional District Judge, Sirsa, whereby the learned Additional District Judge had set aside the judgment and decree dated 17.04.2013 passed by learned Civil Judge(Jr. Divn.), Sirsa and consequently the suit of the plaintiffs was decreed for recovery of Rs.14,000/- for use and occupation of building from morning of 10.02.2011 till evening of 14.02.2011.

Learned Counsel for the appellant has argued that the learned lower Appellate Court below has erroneously reversed the findings of the learned trial Court in a casual and cursory manner by overlooking the documentary and oral evidence produced by the parties and thus, the impugned judgment and decree dated 17.09.2014 is liable to be set aside. It was further argued that the learned Additional District Judge has violated

the provisions of Section 10 and 25 of the Indian Contract Act, 1872 whereby it is trite for the parties alleging oral agreement to prove the same. However, there is no such evidence on record regarding this fact.

After hearing learned Counsel for the appellant and perusing the paper book, this Court is of the considered view that the present petition is devoid of any merit and the same deserves to be dismissed.

The sole dispute that arises for consideration before this Court in the present regular second appeal is as to whether the defendants had hired a portion of the building in question from the plaintiffs for the period of 10.02.2011 to 14.02.2011 (five days) and whether there was a agreement that consideration of Rs.15,000/- was to be paid by the defendants to the plaintiff. A perusal of the paper book would reveal that in order to prove their case plaintiffs had examined Harnam Singh (plaintiff no.1) as PW-1 and Smt. Kulwant Kaur as PW-2. A perusal of the testimony of PW-2 would show that she had very naturally and factually stated that she had clean the clothes of guests of defendants who had stayed in the premises of the plaintiffs for five days i.e. from 10.02.2011 to 14.02.2011 and that she was paid wages of Rs.1000/- by defendant no.2 Sunita Rani, mother of bridegroom Raman. It is an admitted position that Smt. Sunita Rani had not appeared in the witness box to deny the facts as revealed by Kulwant Kaur-PW-2. Once, the plaintiffs had led their evidence the onus had completely shifted upon the defendants to discharge the same. However, the learned lower Appellate Court had rightly observed that the evidence led by the defendants by examining the DW-1 and DW-2 does not inspire confidence because both the witnesses were related to each other. In this view of the matter this Court has no hesitation in holding that the learned lower

Appellate Court, which is the final Court to appreciate the facts, had rightly come to a conclusion that the plaintiffs are entitled to recover for use and occupation of the portion of the building from the defendants.

As far as the arguments of learned Counsel for the appellants regarding Section 10 & 25 of the Contract Act, 1872 are concerned, this Court is not in agreement with the said argument raised by the learned Counsel for the appellant. Although no written agreement was executed, in the normal course of nature the Court has to consider the probabilities while analyzing the evidence led by the parties and in the present case the execution of the written agreement would not debar the plaintiffs from claiming their rightful money on the basis of oral agreement.

In view of the above, finding no question of law much less substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

**(JASWANT SINGH)
JUDGE**

February 27, 2015
Vinay