

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 3071 of 2015 (O&M)
Date of decision: September 28, 2015

SATNAM SINGH

.....APPELLANT

VERSUS

HARBANS KAUR

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether the Reporters of the 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. Avtar S. Khinda, Advocate
for the appellant.

JASPAL SINGH, J.

CM-7361-C-2015

Heard.

Delay of 113 days in filing the appeal is condoned.

CM stands disposed of.

Main case

Instant appeal has been directed against the judgment dated 10.09.2014 passed by Additional District Judge, Kapurthala in Civil Appeal No.2462 of 24.04.2013 whereby the judgment and decree dated 21.03.2013 passed by Additional Civil Judge (Senior Division), Kapurthala was upheld whereby the suit of the plaintiff-respondent for ejectment of the defendant-appellant upon a shop and a room situated in village Saido Bhulana, Opposite RCF, Kapurthala-Sultanpur Lodhi Road, Tehsil and District

Kapurthala as well as for recovery of rent was decreed.

2. The aforesaid suit was resisted by defendant-appellant by filing written statement raising preliminary objections that the suit is not maintainable; that the suit is not properly valued for the purpose of Court fee and jurisdiction; that the plaintiff has got no locus standi or cause of action to file the present suit; that the plaintiff is estopped by her own act and conduct from filing the present suit; that the plaintiff intended to take forcible possession of shop in dispute, which constrained the defendant to file a civil suit for permanent injunction, which was decreed and that the suit is liable to be stayed under Section 10 CPC.

3. On merits, it has been admitted that the plaintiff is a land lady of the defendant for the shop in question but it was alleged that in fact he is a tenant in the premises in dispute @ ₹950 per month and further that no time was fixed for continuation of tenancy. The arrears of rent as claimed by plaintiff was denied.

4. On going through pleading of parties, various issues were culled out by ld. trial court in order to settle the matter in controversy between the parties.

5. Both the parties were afforded ample opportunities to adduce and conclude their evidence in support of their respective claims. They led oral as well as documentary evidence in respect of their pleadings and subsequently closed their evidence.

6. After hearing learned counsel for the parties and appraisal of evidence brought on record by them, the suit of the plaintiff was decreed by ld. lower court vide its judgment and decree dated 21.03.2013.

defendant-appellant preferred an appeal before lower appellate court, which met with the same fate and was ultimately dismissed vide impugned judgment dated 10.09.2014.

8. Aggrieved against the judgments rendered by the ld. trial court as well as lower appellate court, defendant-appellant has approached this Court by way of instant appeal.

9. While challenging the judgments and decrees passed by both the courts below, it has been argued by learned counsel for the appellant that there is no denial of the fact that the tenancy in between the parties is transfer of property but the plaintiff has miserably failed to prove the issuance of service of notice dated 30.10.2003 under Section 106 of the Transfer of Property Act (for short' "Act"). Since, the issuance of service of the notice though accepted as Ex.P3 on record is not proved and until and unless the notice is proved in accordance with law the tenancy cannot be said to have been terminated by plaintiff-Harbans Kaur. In the instant case, neither the plaintiff has herself appeared in the witness-box as her own witness nor has examined her counsel through whom the notice is alleged to have been served. Thus, it cannot be presumed that notice was validly and legally served upon the defendant-tenant. Further, it has been contended by learned counsel for the appellant that both the courts below have also overlooked the fact that there was a valid and effective compromise arrived at between the parties, according to which plaintiff-Harbans Kaur had agreed to reconstruct the roof of the shop in question further promising that she would not seek ejectment. The execution of the said agreement dated 31.05.2013 Ex.D-2 stands fully proved on record. So, in view of the contents of the compromise Ex.D-2, the plaintiff otherwise stands estopped

seeking ejectment of the appellant-defendant. Thus, taking the case of the appellant from any of the angle, plaintiff-Harbans Kaur is neither entitled for possession nor the ejectment of the appellant-defendant from the demised premises and to any arrears of rent. Both the judgments and decrees rendered by both the courts below are against the evidence available on file and are liable to be set aside. Consequently, the suit of the plaintiff deserves to be dismissed in toto.

10. This Court has given an anxious thought to the submission made by learned counsel for the appellant but find the same to be without any legal substance.

11. The mere fact that Harbans Kaur has not appeared in the witness box does not *ipso facto* mean that her entire case be thrown away especially in the circumstances that she has appeared through her attorney Gurbax Singh, who was well aware and had the knowledge of all the facts of the case. He is none else but happens to be the husband of the plaintiff. Thus, in such circumstances, no adverse inference can be drawn against the plaintiff-Harbans Kaur due to her non-appearance in the Court .

12. As far as the due service of notice under Section 106 of the Act is concerned, the same stands fully proved on record. The legal notice under Section 106 of the Act was served upon Satnam Singh, which is dated 30.10.2003. The said notice is proved to have been duly received by Satnam Singh. The acknowledgements in this regard are available on file as Ex. P-6 and Ex.P-7 and the postal receipts are Ex. P-4 and Ex.P-5. The notice was served by way of registered cover through the postal authorities and presumption is attached to these documents i.e. receipts and

acknowledgments that have been duly served upon the concerned addressee

i.e. Satnam Singh. In this regard, we can have the reference and the observation made by the Hon'ble Apex Court in case captioned as “***Madan and Company vs. Wazir Chand***”, AIR 1989 SC 630.

13. Now, coming to the second limb of the contention put forth by learned counsel for the appellant with regard to the compromise dated 31.05.2003 Ex.D-2. It is an undisputed fact that some litigation is going on in between the parties when the land lady intended to get the premises in question vacated from the defendant-appellant and the matter was reported to police but ultimately it was set at rest by way of compromise dated 31.05.2003 Ex. D-2. Execution of any compromise in between the parties is nothing but some arrangement in between the parties whereby the plaintiff undertook not to harass the tenants to get their tenanted premises vacated for certain period. But in no case the recital if any in the compromise Ex. D-2 does not debar the plaintiff/ land lady to seek the eviction of the tenanted premises in accordance with law. It was only thereafter, she served a notice under Section 106 of the Transfer of Property Act terminating the tenancy and when the possession was not delivered and the arrears were not paid, she was constrained to knock the doors of Civil Court seeking decree of ejectment as well as the recovery of arrears of rent. There is no illegality in it. She being the land lady, she certainly entitled to eviction of the tenant(s) as well as the arrears of rent, which were due towards the tenant(s). There is no legal flaw in the impugned judgments and decrees.

14. In the light of what has been discussed above, this Court is of the considered view that there being no illegality, infirmity or impropriety in the impugned judgments and decrees passed by both the courts below, instant appeal is without any merit and is not sustainable in the eyes of law.

Accordingly, it stands dismissed whereby the impugned judgments and decrees passed by the courts below are affirmed, leaving the parties to bear their own cost.

September 28, 2015
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(JASPAL SINGH)
JUDGE