

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

Regular Second Appeal No.3878 of 2015 (O&M)
Date of decision: 18.08.2015

Lal Chand

... Appellant

versus

Smt. Sheela Devi

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.S.K.S.Bedi, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

CM No.9496-C of 2015

Exemption granted as sought for.

Application stands disposed of.

CM No.9497-C of 2015

Evidence of PW4 is taken on record.

Application stands disposed of.

Regular Second Appeal No.3878 of 2015

1. The plaintiff's suit was filed for ejectment on a plea that the construction was less than 10 years of age and the property,

which was in the possession of the defendant as a tenant, is liable for ejectment after notice through a suit. The plaintiff was claiming exemption from the applicability of the Rent Act for new constructions. The suit was founded on a plea that the defendant was a tenant of a shop from October 1998 and he granted a fresh rent note on 10.06.2002 for undertaking to pay rent at ₹1,200/- per month and the defendant had not been a good tenant to him and he fell into arrears and consequently, the plaintiff did not desire the tenancy to continue and brought a civil suit. The contention of the defendant was that he came by possession even in the year 1997 and the plea that the construction was made and completed in October 2008 was only for the purpose of the case to claim exemption from the applicability of the Act.

2. At the trial, the plaintiff was attempting to prove the completion of the building by October 1998 and made reference to the application for grant of sanction for construction with the Municipal Council. PW4-a Municipal Engineer had been summoned to come to the court with register regarding building application. The witness spoke from the records that an application for sanction was made on 02.07.1998 and the sanction had been given by the Municipal Council through its resolution dated 03.08.1998. A copy of the complaint for construction had also been produced at the trial. In the cross-examination, it was attempted to be elicited that the plan

was not prepared by him and he did not have any personal knowledge about the case. The record which he had brought, showed that it was in respect of a house and if there was any building projection, the same was being mentioned as *chobara*. If the plan was with reference to a shop, the shop would have also been mentioned in the record. The witness admitted that the sanction was with reference to a house and the inference, which was stated to be made as per the arguments made, is that there was no plan for a shop and, therefore, the best document had not been filed before the court. If the shop became part of the residential house and the construction of the house itself was made after securing permission from the Municipal Council, it will be fragmenting the evidence of PW4 to read that the plan was not for a shop and, therefore, the shop must have been constructed earlier. I cannot make such an inference in the manner it is canvassed.

3. The counsel would argue that there must have been other proof available for the plaintiff such as purchase of bricks or a mason, who constructed the house at that time. If the plaintiff had relied on a more credible piece of evidence such as securing permission from the Municipal Council for construction and the courts had relied on that, I find the assessment to be adequate of when the construction was completed, having placed the correct inference of fact on documents produced before it. There is no

substantial question of law that arises for consideration in this appeal.

4. The counsel seeks for time for vacating the premises. There has been already a complaint by the plaintiff in the suit that the defendant was not paying the rent properly. I will allow for 4 months time for eviction and direct that there shall be no arrears of rent till date and if there are any, they shall be paid within 2 weeks. The 4 months time shall conclude with 31.12.2015. The payment of contracted rent shall be made within first 5 days of every calendar month and the first of such payment will be made before 5th September, 2015.

5. The second appeal is dismissed with the above observations.

(K.KANNAN)
JUDGE

18.08.2015
sanjeev