

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 4192 of 2015 (O&M)
Date of decision 02.09.2015.

Bakhtawar Singh

..... Appellant.

versus

Gurdev Singh

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers 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. Namit Gautam, Advocate for the appellant.

K.C.PURI, J.

This is an appeal directed by defendant/appellant against the judgment and decree dated 14.08.2015 passed by Shri Sandeep Singh Bajwa, Additional District Judge, Ludhiana vide which the appeal preferred by the defendant against the judgment and decree dated 21.11.2013 was dismissed.

2. Brief facts of the present case are that the plaintiff is owner of the shop in dispute and same was given to defendant on rent. Tenancy was oral one and coupled with delivery of possession. Initial rate of rent was fixed as Rs.200/- per month excluding the electricity and other charges.

Thereafter, the rate of rent was fixed at Rs.500/- per month and then for Rs.1000/- per month. The defendant not being good tenant was highly irregular in paying rent and stopped payment for the last two years. Besides this, shop in question also requires urgent repair and same is also required by the plaintiff for his personal use and occupation. On all these accounts, the plaintiff terminated the tenancy of the defendant vide notice dated 12.01.2011. Despite notice, defendant failed to vacate the demised premises. Hence this suit.

3. Upon notice, defendant appeared and filed written statement taking preliminary objections as to maintainability of the suit in the present form and challenged the locus standi of the plaintiff. Further objections as to the notice given by the plaintiff has been raised by the defendant as the same being illegal and mala-fide and invalid. Objections regarding value of the court fee and no cause of action have also been taken. On merits, the defendant denied other averments and prayed for dismissal of the suit.

4. Replication was not filed. From the pleading of the parties following issues were framed : -

1. Whether the plaintiff is entitled for possession of the suit property as prayed ? OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP
3. Whether the plaintiff is entitled to recovery of means profits as prayed for ? OPP
4. Whether the suit is not maintainable in the present form ? OPD
5. Relief.

5. The parties have led their respective evidence on the aforesaid issues. The trial Court after appraisal of the evidence vide judgment and decree dated 21.11.2013, decreed the suit of the plaintiff.

6. Feeling aggrieved, the defendant preferred First appeal. The learned Additional District Judge, Ludhiana vide judgment and decree dated 14.08.2015 dismissed the appeal of the defendant.

7. Feeling dissatisfied with the aforesaid judgments and decrees dated 21.11.2013 and 14.08.2015, the present regular second appeal has been directed by the defendant/appellant.

8. The appellant in paragraph No.06 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (a) Whether the Ld. Court have failed to appreciate to appreciate the documents on record ?
- (b) Whether the judgments and decrees of the courts below are sustainable in view of facts and circumstances mentioned above ?
- (c) Whether the judgments and decrees of the Ld. Courts below are non-speaking ?
- (d) Whether judgments and decrees of the courts below are perverse and liable to be reversed ?
- (e) Whether the Ld. Courts below have misread and misinterpreted the evidence on record ?
- (f) Whether the notice under Section 106 of the Transfer of Property Act is valid in the eyes of law ?
- (g) Whether the respondent can maintain the suit for possession once he has failed to prove his ownership over the suit property ?
- (h) Whether the Ld. Addl. District Judge has grossly erred in dismissing the application under order 41 rule 27 CPC

without assigning any valid reason ?

- (i) Whether the respondent has concealed the material facts ?

9. I have heard learned counsel for the appellant and have gone through the case file with her able assistance

10. Learned counsel for the appellant has challenged the judgments and decrees of both the Courts below on two grounds firstly that notice under Section 106 of the Transfer of Property Act is defective and the other ground taken by the defendant/appellant is that plaintiff has failed to prove his ownership. Counsel for the appellant has relied upon authority **Sheela vs. Firm Prahlad Rai Prem Prakash reported in 2002 (1) RCR (Rent) 351.**

11. I have considered the said submission but do not find any force in that submission.

12. No defect in notice under Section 106 of the Transfer of Property Act has been pointed out except that it is for one month whereas the notice should have been for a period of fifteen days. The intention of the Parliament in enacting Section 106 of the Transfer of Property Act was to give notice of at-least fifteen days for vacating the premises. Notice for longer period i.e. one month cannot be said to be invalid.

13. So far as authority **Sheela's case (supra)** is concerned the said authority relates to M.P. Accommodation Control Act, 1961. Otherwise also, in that case eviction order was upheld under Section 12(1)(h) of the M.P. Accommodation Control Act, 1961. So, that authority is distinguishable to the facts of the present case.

14. The relationship of landlord and tenant has been admitted in the written statement. The ownership has not been denied in para No.1 of the written statement. It is settled law that tenant is bound to surrender the possession of the landlord after termination of the contract. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal. Consequently, the appeal is without any merit and the same stands dismissed. However, the appellant shall vacate the premises within six months on payment of mesne profits to the extent of Rs.5000/- per month. In case of default of payment of two consecutive mesne profits, the landlord shall be at liberty to get the decree executed even prior to six months along with arrears of rent.

15. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

September 02 , 2015

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