

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

**Regular Second Appeal No.5717 of 2015 (O&M)
Date of Decision: November 06, 2015.**

Ajit Singh

.....APPELLANT(s).

VERSUS

Board of Trustees and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pawan Kumar Mutneja, Advocate with
Mr. Viranjeet Singh Mahal, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal against the concurrent judgments by the Courts below, whereby the suit filed by plaintiff-trust seeking the relief of permanent injunction to restrain the defendants from interfering in the right of plaintiffs to use the roof of shop No.2 and stair on the northern side of the shop leading to the roof of the said shop and further the relief of mandatory injunction directing the appellant-defendant to remove the wall blocking the passage through the stair on the ground floor of the said shop and for fixing shutter illegally removed by him was decreed.

2. Briefly stated, the case of the plaintiffs is that the defendant is a tenant in the disputed shop belonging to Rajinder Deva Orphanage/Yateemkhana Trust, Patiala. In order to increase the income of

the trust, it was planned to construct first floor on the roof of the shop which has passage from the stair on the northern side of the shop. The defendant illegally removed the shutter of stair-case and closed the approach to the roof by constructing the wall. The defendant has broken the wall of the shop from the inside his shop and using the stair illegally.

3. In the written statement, defendant-appellant alleged that the roof of the shop is in his possession and stair-case is inside his shop, as such, he is authorized to use the same exclusively.

4. Both the Courts below, on appraisal of evidence on record, concluded that the roof and stair are not the part of the rented premises.

5. Learned counsel for the appellant-defendant has argued that the dimensions of the shop were given in the plaint as 14' 10" X 26' which include area of the stair-case. It shows that the stair-case was rented out to the appellant-defendant and along with the stair-case, the roof of the shop is also under his tenancy.

6. The above contention raised by learned counsel for the appellant find no support from any evidence on record. Perusal of the rent note dated 01.04.1987, copy of which has been supplied by learned counsel for the appellant during course of argument shows that the appellant was let out only a shop and not the stair-case or the roof. The landlord has pleaded that appellant is in possession of that shop and has included the area of stair-case in the shop by dismantling the wall of his shop from inside. In the absence of any evidence or recital in the rent note that the stair was also let out along with the roof, the appellant has no right to restrain the respondent-trust from

using stair and the roof.

7. On perusal of the paper-book and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

8. No substantial question of law requiring determination arises in this appeal, which has no merits.

9. Dismissed.

November 06, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE