

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

RSA No.3470 of 2011 (O&M)

Date of decision : 29.11.2016

Gurdeep Kaur and another

...Appellants

Versus

Ramesh Kumar and another

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Karan Nehra, Advocate for the appellants.

Mr. S.M. Sharma, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby suit for permanent injunction restraining the defendants through themselves, through power of attorney or through any other person in any manner from demolishing, constructing, repairing or transferring the shop as mentioned in the head note of the suit, has been modified.

Before Mr. Nehra, Advocate could argue the matter, Mr. S.M. Sharma, Advocate has raised the objection qua maintainability of the appeal at the instance of appellant No.1-Gurdeep Kaur-plaintiff No.1 as suit of her was dismissed by trial Court and no appeal under Section 96 of CPC, had been filed.

This fact could not be controverted by Mr. Nehra, Advocate for appellants. Accordingly, appeal qua appellant No.1 is not maintainable. As regards the appeal at the instance of Amarjit Singh-appellant No.2, the landlord instituted the suit for permanent injunction seeking restraint order against the respondents not to demolish the intervening wall between the two shops and from further raising the construction without his permission, which had been partly decreed, in essence, that the rent note dated 28.08.1990 permitted the demolition of wall but submission of Mr. Nehra, Advocate is that rent note was only for a period of 11 months and, therefore, after expiry of the same, the status of the respondents would be of statutory tenant and, therefore, alleged dismantling was against the consent of the landlord and thus, was rightly held to be illegal dismantling. However, the lower appellate Court in appeal preferred by the tenants for both the shops, held dismantling not illegal by referring to the terms and conditions of the rent agreement which is not permissible in law. Though the rest of the findings, have been upheld and thus there is gross illegality and perversity.

Mr. S.M. Sharma, learned counsel appearing on behalf of respondents-defendants submits that on the basis of the evidence brought on record, the trial Court found that wall had already been dismantled. The only question which revolves around is that whether it was as per the terms and conditions of the rent note or not. The said aspect has been noticed by the lower Appellate Court and reversed the observations qua dismantling of the wall illegally. However, rest of the judgment and decree has been affirmed, thus, there is no illegality and perversity.

I have heard learned counsel for the parties and appraised the

paper book and of the view that even if the rent note is for a period of 11 months, terms and conditions can always be read into for collaterals purpose. Even if demolition was done in terms of the contract, though, period of it expired, there would be implied consent of the landlord. Filing of the appeal, in my view, is nothing but settlement of a issue of ego and nothing beyond. Rest of the decree, as per the judgment and decree of the lower Appellate Court had been affirmed. Decree of the trial Court restraining the tenant not to raise the construction or alienate or part with the possession of the shop to other person, mentioned therein, without the permission of the landlord is upheld.

I do not intend to differ with the aforementioned findings as findings are based upon preponderance of the evidence.

No ground for interference is made out.

Accordingly, present appeal is dismissed.

29.11.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No