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

**RSA-3527-2011 (O&M)
Date of decision : 10.11.2016**

M/s Hukam Chand Mahinder Pal and others

... Appellants

Versus

Joginder Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.K. Khunger, Advocate
for the appellants.

Mr. K.B. Raheja, Advocate
for the respondent Nos.2 to 5.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the concurrent findings of fact, whereby the suit for possession of the disputed property has been decreed by both the Courts below.

The sole question raised by Mr. A.K. Khunger, learned counsel appearing on behalf of the appellants-defendants is that a specific objection in the written statement qua the jurisdiction of the Civil Court was taken as the defendants had been inducted as a tenant by virtue of the lease deed dated 01.04.2000.

He further submits that in the opening lines of the cross-examination of the plaintiff-PW-3, he has admitted that the suit property is situated within the municipal limits, therefore, the Civil Court would not have jurisdiction to try the suit. The remedy, if any, was with the Rent

Controller as the status of the appellants-defendants would be a tenant at sufferance or holding over. This fact has not been taken care of and therefore, there is a gross illegality and perversity, thus, urges this Court for setting aside the concurrent findings under challenge.

He further submits that the registered rent agreement does not contain any enhancement clause and therefore, in the absence of evidence, the Courts below could not have ordered to pay the mense profits @ ₹ 50,000/- per year, whereas the rent was @ ₹ 20,000/- per year.

Mr. K.B. Raheja, learned counsel appearing on behalf of the respondents-plaintiffs submits that the appellants-defendants have failed to lead evidence as to whether the property was falling within the municipal limits or not, as the onus was upon him and therefore, few lines in the cross-examination would not oust the jurisdiction of the trial Court, thus, urges this Court for affirming the findings as there is no gross illegality and perversity.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the appellants-defendants have miserably failed to discharge the onus in respect of the averments taken in the written statement as it was incumbent upon him to place on record the copy of the notification to show the limits of the municipal area. I cannot remain unmindful of the fact that the lease deed is in respect of Brick Kiln. Brick Kilns are never allowed to operate within the municipal area. Be that as it may, having failed to do so, I am of the view that the appellants-defendants have failed to discharge the onus on issue No.6.

There is a force in the submissions of Mr. A.K. Khunger, viz-a-viz mense profits, for, the registered rent agreement did not contain the

element of increase and no evidence has been led by the plaintiffs qua market rate/lease deed @ 50,000/- per year.

For the foregoing reasons, the judgment and decree qua mense profits is modified. The rent is reduced from ₹ 50,000/- to ₹ 20,000/- per year. There shall be no change in the due date. Rest of the findings are affirmed.

Accordingly, the appeal is disposed of.

10.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No