

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

**RSA No.1945 of 2016 (O&M)**

**Date of decision:25.04.2016**

Nirmal Kumar and others ... Appellants

Vs.

Misri Devi ... Respondent

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Sapan Dhir, Advocate  
for the appellant.

**AMIT RAWAL J. (Oral)**

The appellant-defendants are aggrieved of the concurrent findings of facts and law, whereby, suit for recovery of ₹3,00,000/- along with interest @ 6% per annum from 02.01.2009 till realization, has been decreed.

Mr. Sapan Dhir, learned counsel appearing on behalf of the appellant-defendants submits that House No.37, Sector 28-A, Chandigarh was purchased by the appellant-defendants, vide sale deed dated 15.05.2007. However, a sum of ₹3,00,000/- was retained by separate undertaking and the same was required to be paid at the time of handing over actual physical vacant possession of one room and kitchen portion of 1<sup>st</sup> Floor. The respondent-plaintiff in cross

examination admitted that remaining tenants continued to remain in occupation and therefore, no action, much less, cause of action accrued in her favour to seek the recovery of the aforementioned amount. He further submits that after few months, the said property was sold to the daughter-in-law of plaintiff, vide sale deed dated 01.07.2007 and though same was brought on record, but could not be proved, much less, exhibited. The trial Court decreed the suit and Lower Appellate Court affirmed the findings on mere conjectures and surmises, as well as, on presumption. He, thus, urges this Court for carving out the substantial questions of law which arose for adjudication of the present appeal.

During the course of arguments, he has referred to the cross examination of PW1 - Misri Devi to contend that first floor means ground floor and second floor means 1<sup>st</sup> floor. He has also drawn the attention of this Court to the contents of the sale deed dated 15.05.2007.

I have heard learned counsel for the appellant-defendants and appraised the impugned judgments and decrees of the Courts below.

For the sake of brevity, para No.1 of the sale deed reads thus:-

*“1. That the possession of two rooms and kitchen on Ground Floor is tenanted with Mrs. Renu, w/o Sh. Rajinder Kumar as licensee being daughter-in-law and*

*the possession of two rooms and kitchen on first floor is tenant with Mrs. Cathey, w/o Joffery at a monthly rent of ₹2500/- per month and possession of one room and kitchen with Mrs. Kiran w/o Sh. Santosh Singh as licensee being daughter. The vendees can get the possession from Mrs. Renu & Mrs. Kiran by filing case before competent Court of jurisdiction and can claim damages for the use and occupation of their respective portions even prior to the date of sale deed, i.e., for the last three years also. The possession of entire second floor is tenanted with Mrs. Anita, w/o Sh. Rajpal and Mrs. Mamta, w/o Sh. Shamsunder at a monthly rent of ₹3200/- per month. The said vendor has delivered the symbolic possession of above said tenanted portions and the actual, physical and vacant possession of two room and kitchen on the ground floor and one room on first floor of the said house to the said vendees.”*

On perusal of the cross examination extracted at page 9 of the grounds of appeal, it has surfaced that vendor vacated the first floor and her daughter has also vacated first floor. The term “first floor” and “second floor” has clearly been specified in the cross examination to be treated as “*pehli manjil*” and “*dusri manjil*”. The aforementioned statement has surfaced during the cross examination.

Be that as it may, the fact remains that once there is a categorical admission of the respondent-plaintiff that she had vacated the premises and her daughter-in-law was occupying two rooms and kitchen on the ground floor but the undertaking also relates to vacation of one room and kitchen on the first floor. Once it has been proved on record that daughter occupying first floor has vacated, the appellant-defendants were liable to honour the undertaking. Having failed to do so, it compelled the respondent-plaintiff to institute the suit. In my view, both the Courts below have rightly decreed the suit by interpreting the sale deed and cross examination.

There is another aspect of the matter. The sale deed dated 01.07.2007 alleged to have been executed by the appellant-defendants in favour of daughter-in-law has not been proved, in accordance with law, therefore, the same cannot be relied upon. On the contrary, the appellant-defendants have failed to lead any evidence by examining the alleged person in occupation of one room and kitchen on first floor to belie the claim of the respondent-plaintiff .

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below, which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)  
JUDGE

April 25, 2016  
savita