

RSA No.3609-2015

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

**RSA No.3609-2015 (O & M)
Date of Decision: 27.02.2016**

Manjeet Singh (since deceased) through his LRs

... Appellant (s)

Versus

Prakash Kaur

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers 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. Kanwal Goyal, Advocate,
for the appellants.

Mr. M.S.Dhami, Advocate,
for the respondent.

Paramjeet Singh Dhaliwal, J.(Oral)

This regular second appeal of the defendant through his legal representatives is directed against the judgment and decree dated 04.11.2014 passed by learned Additional District Judge, Hoshiarpur whereby appeal filed by the plaintiff against the judgment and decree dated 06.04.2011, dismissing the suit for possession, has been allowed.

For convenience sake, hereinafter, reference to parties is being made as per their status in the plaint.

The detailed facts are already recapitulated in the judgments

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of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiff filed a suit for possession of the shop by way of ejectment as detailed in the head-note of the plaint along with recovery of outstanding rent for a period from 01.09.2002 to 31.03.2004 @ ₹1,000/- per month. It was averred that Sarup Singh @ Rup Lal who was husband of the plaintiff, was owner of the property bearing khasra No.17563/1815/1(7-13) situated in village Munak Kalan. The said Sarup Singh @ Rup Lal expired and the plaintiff succeeded to his estate along with other co-sharers. The plaintiff herself raised construction of the shops and about one and half years ago prior to filing of the suit, she rented out one shop as detailed in head-note of the plaint and as shown in the site plan to the defendant for 11 months only at monthly rent of ₹1,000/-. The tenancy was oral one. The defendant neither paid the agreed rent nor delivered back vacant possession of the shop in dispute. The plaintiff requested him many times to pay the outstanding monthly rent as well as vacate the possession. The defendant has no legal right to continue his possession over the shop after the expiry of tenure of the lease and after 31st July, 2003, his possession is that of a trespasser. Even legal notice dated 01.03.2004 was served upon the defendant calling upon him to hand over the vacant possession of the shop and to pay outstanding rent on 31.03.2004 and despite the fact that notice was served upon the defendant, he did not bother regarding the same which gave cause of

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action to the plaintiff to file the present suit.

Upon notice, the defendant resisted the suit and filed written statement taking various preliminary objections. It was pleaded that he took the shop in dispute on rent from Sarabjit Singh son of Saroop Singh @ ₹300/- per month. The electric supply to the shop was also from the other shops of Sarabjit Singh which are adjoining the shop given on tenancy to the defendant. Sarabjit Singh son of the plaintiff has been receiving rent regularly of the premises in question against receipts. Due to jealous, Sarabjit Singh started threatening the defendant to vacate the shop and also threatened to forcibly dispossess the defendant from the shop in question which resulted into filing of suit by defendant against Sarabjit Singh. In that suit, interim injunction was granted in favour of the defendant. The tenancy was oral but it was with Sarabjit Singh son of Sarup Singh, not with the plaintiff. Other averments in plaint were denied and dismissal of suit was prayed for.

On the basis of pleadings of parties, the Court of first instance framed following issues:

- “1. Whether plaintiff is owner and landlord of the shop in dispute?OPP*
- 2. Whether defendant is a tenant in the disputed shop under the plaintiff?OPP*
- 3. If issue No.1 and 2 are proved, whether the rate of rent is ₹1000/- per month as alleged by the plaintiff or ₹300/- per month as alleged by the defendant?On parties*

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4. *Whether tenure of tenancy of the defendant expired? If so its effect?OPP*
5. *Whether the plaintiff served a legal and valid notice terminating the tenancy of the defendant with regrd to the shop in dispute?OPP*
6. *Whether the defendant is in arrears of rent from 01.09.2002 up to 31.03.2004 as alleged?OPP*
7. *Whether the suit is not maintainable in the present form?OPD*
8. *Whether the plaintiff has got no locus standi to file the present suit?OPD*
9. *Whether the plaintiff has not come to the court with clean hands?OPD*
10. *Whether the suit of the plaintiff is bad for the purpose of court fee and jurisdiction?OPD*
11. *Whether plaintiff is estopped from filing the present suit by her own act and conduct?OPD*
12. *Whether plaintiff is entitled for possession of the shop in dispute by way of ejectment as prayed for?OPP*
13. *Whether the plaintiff is entitled to recover arrears of rent? If so to what extent?OPP*
14. *Relief.”*

After appreciating the evidence, the Court of first instance dismissed the suit. Feeling aggrieved, the plaintiff preferred an appeal before learned Additional District Judge, Hoshiarpur, who accepted the

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appeal and decreed the suit for possession by way of ejectment of the defendant and for recovery of rent @ Rs.300/- per month for the period from 0-1.09.2002 to 31.03.2004. It has also been directed that the plaintiff shall be entitled to damages for utilization of premises at the same rate along with interest @ 9% per annum after the notice of ejectment was served upon the defendant till the vacant possession of the shop is handed over to the plaintiff. Hence, this regular second appeal.

I have heard learned counsel for the parties and perused the record.

On 18.12.2015, following order was passed by a Coordinate Bench of this Court:

“As per office report, service is complete.

It has been brought to the notice of this Court that 19.12.2015 is the date fixed before the Executing Court which is likely to be adjourned on account of 19.12.2015 being declared holiday.

Learned counsel for the appellants undertakes to hand over the keys of the property in question to the decree holder along with an amount of Rs.25,000/- without prejudice to her right in this pending appeal.

Adjourned to 25.02.2016.”

Today, Satwinder Kaur, one of the legal representatives of deceased-Manjeet Singh is present in Court along with keys of the shop and ₹25,000/- in cash and states that after the demise of Manjeet Singh, shop is lying vacant. She also stated that in compliance of order dated 18.12.2015, keys of the shop along with amount of ₹25,000/- could not

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be handed over to the respondent as none appeared on behalf of the respondent before the Executing Court. The said Satwinder Kaur has submitted that she has brought keys and amount as ordered by this Court and is ready to hand over the same to the respondent. The keys and the amount of ₹25,000/- have been handed over to learned counsel for the respondent, who accepted the same after getting instructions from the respondent and receipt for taking over the same has been handed over by learned counsel for the respondent to appellant No.1 through learned counsel for the appellants. The handing over of keys and amount of ₹25,000/- will be treated as part of complete satisfaction of the execution which is pending before the Executing Court. The handing over of the keys indicates that possession has been delivered to the respondent-decree holder from today and possession will be deemed to be of the respondent-decree holder. No further claim shall survive with regard to remaining amount in the execution petition and the execution petition pending in the Executing Court shall stand dismissed being fully satisfied.

In view of above, learned counsel for the appellants does not press the instant regular second appeal.

Dismissed as not pressed.

27.02.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge