

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

RSA-568-2016 (O&M)

Date of decision: 08.02.2016

Parshotam Lal

...Appellant(s)

Versus

Kuldip Singh

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ranjit Saini, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

CM-1557-C-2016

Heard.

CM application is allowed as prayed for. The appellant is permitted to make good the deficiency in Court fee.

CM-1558-C-2016

Heard.

Keeping in view the circumstances, delay of 37 days in filing the appeal is condoned.

Main case

The instant regular second appeal has been preferred

against the judgment and decree dated 07.11.2011, passed by the learned Addl. Civil Judge (Senior Division), Garhshankar (for short, 'the trial Court'), whereby, the suit of the plaintiff-respondent has been partly decreed; and judgment and decree dated 02.09.2015, passed by the learned Additional District Judge, Hoshiarpur (for short, the 'first Appellate Court'), whereby, the appeal preferred by the defendant-appellant against the impugned judgment and decree dated 07.11.2011, of the trial Court, has also been dismissed.

The plaintiff filed suit for possession by way of ejectment of the defendant from the shop marked as ABCD shown in red colour bounded as detailed in the head note thereof, along with recovery of Rs.2,100/- as arrears of rent for the period from November, 2007 to December, 2007. The learned trial Court decreed the suit of the plaintiff to the extent of possession, whereas, the suit to the extent of recovery of Rs.2,100/- was dismissed.

The defendant went in appeal before the learned first Appellate Court, which affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record and dismissed the appeal vide impugned judgment and decree dated 02.09.2015.

Hence, this appeal at the behest of the defendant.

Learned counsel for the appellant contends that the judgment and decree passed by the learned Courts below are illegal and unsustainable as the mandatory notice under Section 106 of the Transfer of Property Act was not served upon the appellant-defendant before filing the suit for possession. The learned Courts below further erred in fixing the rate of rent @ Rs.300/- per month, in spite of the fact that the stand of the plaintiff inasmuch as the rent of the demised shop was Rs.1,050/- per month, was disbelieved. No other point has been raised.

I have heard learned counsel for the appellant and gone through the case file.

During the course of trial, the plaintiff examined Shri Satish Kumar, Advocate of Garhshankar, who has categorically stated during his cross-examination that on the instructions of the plaintiff, he had served a notice upon the defendant through registered post, which was duly received by the defendant-appellant. A copy of the notice, Ex.PW2/A, acknowledgment Ex.PW3/B and postal receipt, Ex.PW3/C are also proved on record. No effort was made by the appellant-defendant to prove that the signatures appearing on the acknowledgement were not in his hands. Rather he has admitted his signatures on the

acknowledgement, Ex.PW2/B, in his cross-examination. Therefore, the argument that no mandatory notice was served, is not available to the appellant-defendant.

As far as the rate of rent is concerned, the stand of the plaintiff was that the same was Rs.1050/- per month but in the absence of any evidence to this effect, the assertion of the plaintiff was disbelieved by the Courts below. However, this fact is not sufficient to demolish the entire case of the plaintiff, who has successfully proved his ownership over the disputed property. After serving notice upon the defendant, the tenancy was terminated and thus, the defendant was not entitled to retain the possession of the dispute shop.

The present case relates to the appreciation of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

08.02.2016
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(JITENDRA CHAUHAN)
JUDGE