

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

(1)

**Regular Second Appeal No.5734 of 2016 (O&M)
Date of Decision: November 07, 2016.**

Manjit Singh Walia and others

.....APPELLANT(s).

VERSUS

Nirmala Rani and others

.....RESPONDENT(s).

(2)

Regular Second Appeal No.5735 of 2016 (O&M)

Manjit Singh Walia and others

.....APPELLANT(s).

VERSUS

Nirmala Rani and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vikas Bali, Advocate
for the appellant (s).

Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate
for the respondents.

SURINDER GUPTA, J.

Above captioned regular second appeals have been taken up together as both arise from the same judgment passed by Additional District Judge, Ludhiana, whereby he dismissed the first Appeal filed by the appellants-defendants and partly allowed the cross-objections filed by respondents-plaintiffs to the effect that they are entitled to mesne profits @ ₹3000/- per month from the date of filing of the suit till decision of the suit with interest @ 6% per annum.

2. Admittedly, appellants-defendants are in possession of the suit property bearing Municipal No.B-XXXII-4260/1 situated at Kakowal Road, Basant Vihar, Ludhiana. The plaintiffs claimed that the possession was given to defendant No.1 to run a school in partnership. However, the partnership deed could not be reduced in writing as plaintiffs had full faith in defendants No.1 and 2. As the plaintiffs were not getting any profit, they asked defendant No.1 to close the school but instead of doing the needful, he got filed a false and frivolous suit from defendants No.3 and 4, who claimed themselves as tenant over the suit property. Despite dissolution of partnership, they failed to deliver possession of the suit property to the plaintiffs.

3. The plea of appellants-defendants is that suit property was taken on rent by defendants No.3 and 4 from plaintiffs No.1 and 2 on monthly rent of ₹500/- per month w.e.f. 01.02.1985.

4. Admittedly, the controversy regarding the tenancy of defendants No.3 and 4 has already been resolved in the suit filed by them wherein the plea that they have taken the disputed premises on rent, was discarded and the matter has since been finally set at rest in first appeal and then in regular second appeal by this Court.

5. Faced with the situation, learned counsel for the appellants-defendant could not reiterate the plea raised by the respondents-plaintiffs. He could not point out any other status of appellants for their possession over the suit property.

6. Learned counsel for the appellants has argued that plaintiffs No.1 and 2 did not step into witness box and even the plea raised by

defendant No.3 and 4 claiming themselves to be tenant in the disputed property, is discarded, the plaintiffs have also not been able to prove their plea of running the school in partnership.

7. In the written statement, defendant No.1 and 2 (now appellants) raised a plea that they have no concern with the suit property and contested the claim of plaintiff that it is bad for their misjoinder.

8. The only question which call for answer from appellant in these appeals is that they have no plea to protect their possession over the suit property. Even if, the respondent-plaintiff's plea that the school was started in partnership is disbelieved, the possession of the appellants over the suit property is unauthorised, which they are liable to surrender to the true owner.

9. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

10. No substantial question of law requiring determination arises in these appeals, which have no merits.

Dismissed.

November 07, 2016

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No