

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 93 of 2016 (O&M)
Date of Decision : 12.01.2016

Rajinder SinghAppellant

Versus

Som NathRespondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Arora, Advocate
for the appellant.

Surinder Gupta, J.

This appeal has been filed against the judgment passed by Civil Judge (Junior Division), Ludhiana, decreeing the suit of plaintiff for possession over the suit property which is a shop situated at village Daad, *Tehsil* and District Ludhiana and also for recovery of ₹9240/- as arrears of rent with interest.

2. In later part of the judgment parties will be referred as 'plaintiff' and 'defendant' as per civil suit.

3. Plaintiff's case, in brief, is that the defendant is tenant in the demised premises @ ₹2310/- per month as rent. Vide notice dated 29.08.2011 under Section 106 of the Transfer of Property Act (later referred to as the 'T.P. Act'), tenancy of defendant was terminated and he was asked to vacate the premises within 15 days from the date of receipt of notice. On his failure to vacate the demised premises, the instant suit was filed.

4. The defendant has also not paid the rent of ₹2310/- per month w.e.f. July, 2011.

5. The defendant contested claim of plaintiff *inter alia*

pleading that the suit property falls within the municipal limits of Ludhiana. The provisions of East Punjab Urban Rent Restriction Act, 1949 (later referred to as 'the Act') are applicable to the premises and this suit is barred. The plea of plaintiff that defendant is in arrears of rent from July, 2011 was contested and it was alleged that rent upto 10.01.2012 has already been paid. The receipt of notice under Section 106 of T.P. Act was also denied.

6. Learned Civil Judge (Junior Division), Ludhiana on appraisal of evidence concluded that the service of notice under Section 106 of T.P. Act is proved. Even witness of the defendant, namely Satpal Singh, has stated that the defendant received and told him about the receipt of notice. This plea of the defendant that rent upto January, 2012 had been paid was discarded and he was held to be in arrears of rent from 01.07.2011.

7. On appeal, findings of learned Civil Judge (Junior Division) were affirmed by the Ist Appellate Court.

8. I have heard learned counsel for the appellant and perused the paper-book with his assistance.

9. Learned counsel for the appellant has argued that the premises is situated on Pakhowal road, Ludhiana which falls within the municipal area. Though, the defendant could not produce any evidence in support of his plea but onus was on plaintiff to prove that the premises does not fall in the urban area of Ludhiana. He has further argued that receipt of notice under Section 106 of T.P. Act was not proved and the receipt about payment of rent upto January, 2012 was wrongly

discarded by the Court below. The defendant was a tenant for the last 15 years before filing of the suit and had never defaulted in payment of rent. While discarding the receipt regarding payment of rent upto January, 2012, the Court below has wrongly concluded that the defendant has not taken assistance of expert to prove the signatures of plaintiff over the receipt.

10. So far as first submission of learned counsel for the appellant that the premises is situated within the urban area of Ludhiana is concerned, the same is without merits as admittedly the defendant produced no evidence to corroborate his plea. As per claim of plaintiff, the suit property is situated in village Daad. The onus was on defendant to prove that village Daad, where the suit property is situated, falls within the municipal limits of Ludhiana.

11. The second plea of defendant that notice under Section 106 of T.P. Act was not received by him was discarded by the Court below in view of postal receipt produced on record and the statement of witness examined by the defendant, namely; Satpal Singh who has stated that the defendant received the notice and discussed the same with him. Both the Courts below discarded the receipt (Ex. DW/1) regarding payment of rent from 10.07.2011 to 10.01.2012 in view of admission of appellant that plaintiff had never issued any receipt of rent to him. While appearing as PW-1, plaintiff had denied his signatures over the receipt. The defendant had not examined any witness in whose presence the rent was paid.

12. On perusal of judgments of Courts below, I find no

legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

January 12, 2016
jk

(SURINDER GUPTA)
JUDGE