

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

**R.S.A No. 4265 of 2014 (O&M)**

**Date of decision : 01.04.2016**

**Sandeep**

**..... Appellant**

**Versus**

**Rajnish Sachdeva**

**..... Respondent**

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr.Rajinder Goyal, Advocate  
for the appellant.

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**DARSHAN SINGH,J**

The present appeal has been preferred by the appellant-defendant against the judgment and decree dated 05.03.2014 passed by the learned Additional District Judge, Kaithal, vide which the appeal filed by him against the judgment and decree dated 24.07.2012, passed by the learned Civil Judge (Sr. Division), Kaithal, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The plaintiff-respondent filed the suit for possession by way of ejectment of the defendant-appellant from the suit property i.e. the ground floor of a single Khani shop comprised in Khewat No. 399 Khasra no.357 situated near State Bank of India, Branch, Karnal road, Kaithal.

As per the averments in the plaint, the plaintiff is owner of the suit

property, which was rented out to the defendant for 11 months w.e.f. 21.02.2005 to 20.01.2006 on payment of Rs. 2000/- per month as rent, which was exclusive of house tax. A rent note was also executed. It was agreed that defendant shall pay monthly rent in advance. The construction of the suit property was completed after getting the requisite site plan sanctioned from the Municipal Committee, Kaithal on 25.06.1999. Therefore, the provisions of The Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short 'Act') are not applicable to the suit property. It is alleged that the vacant piece of land was purchased by the plaintiff from Kamla Devi upon which the construction was raised. It is further pleaded that the appellant-defendant has failed to make the payment of rent and the house tax w.e.f. 25.10.2005. Therefore, his tenancy was terminated vide notice dated 02.03.2006. The appellant-defendant has not handed over the vacant possession of the suit property to the plaintiff-respondent. Hence, the suit.

4. Appellant-defendant contested the suit on the plea that, he was tenant on both the floors of the shop. He denied that tenancy for a fixed period of 11 months only. He also denied that the construction was raised after 25.06.1999 and that the plaintiff has purchased the vacant plot. It was further pleaded that the rent was always offered to the plaintiff, but he did not receive and the appellant-defendant was compelled to file an application under Section 6-A of the Act to deposit the rent of the demised premises from 30.01.2005 to 25.06.2005, which was allowed vide order dated 14.12.2006. The said rent was paid by the defendant to the plaintiff under a compromise. The appellant-defendant

also denied the service of the notice of termination of tenancy and pleaded for dismissal of the suit.

5. Plaintiff filed the replication controverting the pleas raised in the written statement.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 05.05.2008:-

1. Whether the plaintiff is entitled to a decree for possession by way of ejectment of the defendant from the suit property?OPP
2. Whether the plaintiff is entitled to recover the rent/use and occupation charges etc. plus house tax with interest at the rate of 18 % per annum from the defendant?OPP
3. Whether this Court has got no jurisdiction to entertain and try the present suit?OPD
4. Whether the suit of the plaintiff is barred by limitation?OPD
5. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction?OPD
6. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court partly decreed the suit filed by the plaintiff-respondent vide impugned judgment and decree dated 24.07.2012 and the appellant-defendant was directed to hand over the vacant possession of the suit property to the plaintiff within one month. He was also directed to clear the arrears of using the suit property w.e.f 20.06.2011 till the delivery of the actual possession of the suit property to the plaintiff at the rate of Rs.2000/- per month.

8. Aggrieved with the aforesaid judgment and decree passed by the learned trial Court, the defendant-appellant preferred the appeal, which was also dismissed by the learned Additional District Judge,

Kaithal. Hence, this Regular Second Appeal.

9. I have heard Mr. Rajinder Goyal, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that the Civil Court had no jurisdiction to entertain the suit. The provisions of the Rent Act were applicable. He contended that the appellant has placed on file the copy of assessment register for the year 1995-96 Ex.D-2, wherein the property owned by Kamla Devi, the vendor of the plaintiff bearing no.119 (9)/12 has been assessed to the house tax. Appellant has also placed on record the copies of the house tax assessment register for the year 2001-2002 and 2010-2011 Ex.D-13 and Ex.D-14 respectively. Thus, he contended that the building was in existence even in the year 1995-1996. That is why, it was assessed to house tax.

11. He further contended that the plaintiff-respondent has not brought on file any completion certificate to show that the completion of the building was completed in June 1999 as alleged by him. Thus, he contended that the demised premises were not exempted from the presence of the Rent Act. To support his contentions, he has relied upon case **S. Ranganathan Vs. S.Venkatesan 1995 AIR (Madras) 146**. Thus, he contended that the Civil Court had no jurisdiction to pass the decree.

12. I have duly considered the aforesaid contentions.

13. Learned counsel for the appellant has assailed the judgment and decrees passed by the learned Courts below on the sole ground that the provisions of the Rent Act have become applicable and Civil Court

had no jurisdiction to pass the decree for possession by way of ejectment. As per Section 1 (3) of the Rent Act, the Provisions of the Act are not applicable to the building. The construction of which is completed on or after the commencement of this Act for a period of 10 years from the date of its completion. So, the provisions of the Rent Act are not applicable to the building for a period of 10 years from the date of completion of the construction. In the instant case, there is sufficient evidence to show that on the date of filing the suit, 10 years have not completed from the date of completion of construction of the demised premises. The plaintiff-respondent has purchased the property in dispute vide sale deed Ex.P-1 dated 30.06.1998. In the said sale deed, the plain land has been mentioned. So, as per the sale deed, no building was existing therein. Ex.P-8 is the site plan got sanctioned by the plaintiff-respondent for raising the construction of the demised premises. The said site plan was sanctioned on 26.06.1999 which has been proved by PW-4 Joginder Singh, Inspector Municipal Committee. Form BR-IV bearing BF No. 315 dated 05.03.1999 has been issued by the Municipal Committee, Kaithal in favour of the plaintiff, which is Ex.P-9. The demand charges qua the shop in question were paid by the plaintiff vide receipt Ex.P-10 dated 05.03.1999. So, all these documents corroborates the oral evidence adduced by the plaintiff that the construction of the shop was in June 1999 after getting the site plan Ex.P-8 sanctioned from the Municipal Committee, Kaithal.

14. Learned counsel for the appellant has vehemently relied upon the copy of the house tax assessment register Ex.D-12 for the year

1995-96 to show that the building was already in existence even before the purchase by the plaintiff-respondent. As per the Provisions of Section 76 of the Haryana Municipal Act, 1973, even the land situated within municipal area can be assessed to tax. The learned trial Court has observed that Ex.D-12 does not show that any building was constructed therein. So, Ex-D-12 cannot established that the demised premises were already in existence. Moreover, the site plan Ex.P-8, Form BR Ex.P-9 and the receipt of demand charges Ex.P-10 shows that the plaintiff has started the construction in the year 1999 after getting the site plan sanctioned and completing other formalities. So, it may be possible that the old structure, if any, standing in the land might have been demolished by the previous owner and only vacant land has been sold to the plaintiff. So, there is no escape from the conclusion that the period of 10 years has not completed from the date of completion of construction of the demised premises on the date of filing the suit as the construction has taken place in the year 1999 and the present suit has been filed on 01.12.2007. Consequently, the provisions of the Rent Act were not applicable to the demised premises and the Civil Court had jurisdiction to try and entertain the suit for possession by way of ejectment. Case **S.Ranganathan (Supra)** relied upon by learned counsel for the appellant is quite distinguishable on facts.

15. The present suit has been filed for possession by way of ejectment by the plaintiff-respondent on the basis of title. The tenancy of the appellant-defendant has been duly terminated by the plaintiff-respondent by service of the notice. So, certainly, the plaintiff-respondent

is entitled for the possession of the demised premises by way of ejectment of the appellant.

16. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below, which do not warrant any interference by this Court in the Regular Second Appeal.

17. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

**April 01, 2016**

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**(DARSHAN SINGH)  
JUDGE**