

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.151 of 2015 (O&M)

Date of Decision:22.02.2017

Dr.Pardeep Tiwari

.....Appellant

Versus

Swaran Singh Malhi

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Prateek Pandit, Advocate,
for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Present regular second appeal, at the hands of an unsuccessful defendant, is directed against the impugned judgment and decree dated 02.09.2013, whereby first appeal of the defendant was dismissed and the impugned judgment and decree dated 25.04.2011 passed by the learned trial Court, decreeing the suit of the plaintiff-respondent for possession by way of ejectment and for recovery, were upheld.

Brief facts of the case, as noticed by the learned trial Court in para 1 of its impugned judgment, are that the plaintiff was owner of the shop as mentioned in the head note of the plaint and the defendant took the said shop in the month of 1999 on monthly rent of ₹1750/-. The defendant was delivered the possession being tenant and defendant being habitual defaulter was in arrears of rent w.e.f. 1.4.2002. Notice dated 27.6.2006, as required under section 106 of the Transfer of Property Act was served upon the defendant through registered post as well UPC. The stipulated rate of

rent was ₹1750/-. The rent till 31.7.2003 has become time barred, so in the

present suit the plaintiff was seeking to recover the arrears of rent from 1.8.2003 till 31.7.2006 @ ₹1750/- per month which comes to the tune of ₹63,000/-. Despite the requests having been made by the plaintiff several times, the defendant did not pay any heed, rather he refused to deliver the possession of the demised premises. Reply to the notice having been sent was received from Sh. Karam Singh Ahluwalia, Ld. Counsel for the defendant but the said reply was based upon wrong facts, also ultimately prayer has been made for decreeing the suit by way of delivery of possession after ejection of the defendant and also for recovery of arrears of rent from the defendant.

Defendant was served in the suit. He appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to the relief of ejection of the respondent as prayed for?OPP*
- 2. Whether the plaintiff is entitled to recover the amount of ₹63,000/- on account of arrears of rent?OPP*
- 3. Whether the plaintiff has not come to the Court with clean hand?OPP*
- 4. Whether the plaintiff is estopped by his own act and conduct to file the present petition? OPR*
- 5. Whether the notice dated 27.06.2005 is wrong, illegal and void?OPR*
- 6. Whether the suit is not maintainable?OPR*
- 7. Relief”*

In order to prove their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After hearing the

learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has duly proved his case by leading cogent and convincing evidence. Accordingly, suit for possession by way of ejectment of defendant out of the shop in question and also for recovery, was decreed by the learned trial Court vide its impugned judgment and decree dated 25.04.2011.

Feeling aggrieved, defendant filed his first appeal which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 02.09.2013. Hence, this regular second appeal, at the hands of the defendant.

Heard learned counsel for the appellant.

The basic issue in the present case right from day one was that whether the plaintiff has complied with the provisions and requirements of Section 106 of the Transfer of Property Act, 1882 (for short “the T.P.Act”), before filing the present suit. A bare combined reading of both the impugned judgments passed by the learned Courts below will make it crystal clear that the plaintiff-respondent herein not only complied with the requirements of law contained in Section 106 of the T.P.Act, but he also duly proved his case by leading cogent and well-convincing evidence.

Plaintiff proved the legal notice dated 27.06.2006 as Ex.P1. It was a notice for fifteen days with a view to terminate the tenancy between the parties. Suit property was admittedly not an agriculture land or industrial property. It was a shop on monthly rent with the defendant. Receipt of legal notice Ex.P1 also stood duly proved from reply to the legal notice Ex.D24. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass

their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at a just conclusion, the learned first appellate Court re-considered the factual as well as legal aspect of the matter, in the correct perspective. The cogent findings recorded by the learned first appellate Court in para 20 to 24 of its impugned judgment, which deserve to be noticed here, read as under:-

“During the course of arguments, the fact that plaintiff Swaran Singh Malhi served a legal notice dated 27.06.2006 of 15 days proved on record as Ex.P1 upon Dr. Pardeep Tiwari whereby the tenancy of defendant over shop in dispute was determined is not controverted. Moreover the receipt of notice is evident from the copy of reply to legal notice proved on record as Ex.D24.

Though learned counsel for the appellant has disputed the legality and validity of impugned notice under Section 106 of Transfer of Property Act yet learned counsel for the appellant has failed to convince this court which of the requirement of Section 106 of Transfer of Property Act has not been complied with. Even there are no pleadings to the said effect. So the assertion of learned counsel for the appellant disputing the legality and validity of notice under Section 106 of Transfer of Property Act is without any substance. Reliance in this regard can be placed upon the authority of law relied upon by learned counsel for the respondent by Hon'ble Delhi High Court in case titled as “Shri Ram Pistons and Rings Ltd. Vs. Dr. Banwari Lal and Anr. 1998(2) Civil Court Cases 545”, wherein it has been observed as under:-

“It must be pleaded as to which of the requirements of S. 106 of TPA is not complied with- Merely disputing legality and validity of

notice in the written statement specifying which of the requirements of S. 106 TPA is not complied with does not tantamount to making requisite plea.”

The argument of learned counsel for the appellant that in site plan Ex.P4 the shop in dispute has been described of village Nanu Malian whereas the shop in question falls within the domain of village Saido Bhulana cannot be taken to non suit the plaintiff because there is no dispute regarding the location of the shop in dispute at village Saido Bhulana. Defendant has not disputed his possession over shop in question, so the mistake occurred in site plan Ex.P4 seems to be clerical in nature and does not strike at the root of the case of plaintiff. Moreover, the defendant in his plaint in another suit for permanent injunction against plaintiff proved on record as Ex.D2 has correctly described the shop in dispute as alleged by plaintiff in the present plaint.

The next contention of learned counsel for the appellant that the intention of plaintiff in seeking the eviction of defendant from demised shop is mala fide since the shop in dispute is not required to plaintiff as he sold the back portion of shop to Harbans Lal vide sale deed dated 16.12.2006 proved on record as Ex.D3 also carries no weight because admittedly the shop in question falls within the rural area, so the protection of the provisions of East Punjab Urban Rent Restriction Act is not available to defendant. Ex.P1 is the notice dated 27.06.2006 under Section 106 of Transfer of Property Act vide which the tenancy stood determined so no fault can be found that the eviction of appellant/defendant from demised shop.

The argument of learned counsel for the appellant that the learned lower Court failed to take note of the deposit of rent w.e.f. December 2005 to 31.10.2006 to

the tune of ₹19850/- and vide challan Ex.D9 hold substance. Plaintiff had claimed arrears of rent w.e.f. 01.08.2003 to 31.07.2006 @ ₹1750/- per month i.e. total ₹63,000/-. Since the defendant had deposited arrears of rent w.e.f. December 2005 to 31.10.2006 to the tune of ₹19,850/- vide receipt Ex.D9, so the learned lower court was enjoined upon to deduct this amount from the arrears of rent i.e. ₹63,000/- but it seems that Ex.D9 escaped from the notice of learned lower court. Infact after deposit of ₹19,850/- only ₹49,000/- were due against the defendant from plaintiff towards arrears of rent. So plaintiff was entitled to the recovery of ₹49,000/- as arrears of rent.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by the learned Courts below. Concurrent findings of facts have been recorded. Further, when confronted with the order dated 13.07.2016 passed by this Court, dismissing an identical regular second appeal No.64 of 2013, titled as Sandeep Tiwari Versus Harbans Kaur, wherein none else but brother of the appellant was ordered to be ejected, in a similar suit under similar facts and circumstances, learned counsel for the appellant had no answer and rightly so, it being a matter of record. Under these circumstances, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Learned counsel for the appellant could not refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court,

while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned judgments and decrees passed by the learned Courts below have not been found suffering from any patent illegality or perversity, the same deserve to be upheld. Present appeal is wholly misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

February 22, 2017
seema

(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No