

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

RSA No.1853 of 2015 (O&M)

Date of decision : 07.09.2017

Jagan Nath

...Appellant

Versus

Nagar Council Guruhar Sahai

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.P.S. Duggal, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for mandatory injunction for issuance of directions to the defendant-Nagar Council Guruhar Sahai to receive the rent of the shop owned by the defendant situated at Main Bazar, Mandi, Guruhar Sahai.

It was the case of the plaintiff that he is in possession of 420 square feet of area and defendant is refusing to accept the aforesaid rent.

Defendant appeared and contested the suit. It was submitted that the plaintiff is in possession of 280 square feet area and plaintiff wants that rent be accepted by the Nagar Council with respect to 420 square feet.

During the course of evidence, defendant had produced on record a Resolution passed by the Nagar Council in the year 2007 wherein it was recorded that the plaintiff is only entitled to 280 square feet area which is under his tenancy.

Learned trial Court after appreciating the evidence available on the file partly decreed the suit only to the effect that the defendant shall accept the rent for 280 square feet area and issue a receipt thereof.

Appeal filed before the First Appellate Court by the plaintiff was dismissed after re-appreciating the evidence available on the file.

Learned counsel for the appellant has vehemently argued that once DW1-Ram Darshan Vohra, Junior Assistant, Nagar Council Guruhar Sahai has admitted in his cross-examination that the plaintiff is in possession of a shop measuring 420 square feet, therefore, the Courts were wrong in decreeing the suit only to the extent of 280 square feet.

I have heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below. I have seen the statement of Ram Darshan Vohra-DW1. He has stated that Nagar Council had passed a Resolution No.282 dated 05.12.2007 wherein plaintiff was approved to be a tenant only of 280 square feet area. Merely because one of the witness has admitted the possession of the plaintiff over an area of 420 square feet, the suit of the plaintiff cannot be decreed qua the entire area. Tenancy of the plaintiff proved only to the extent of 280 square feet, therefore, there is no error in the judgments passed by the Courts below.

Regular Second Appeal is dismissed.

07.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No