

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

RSA No. 6814 of 2016 (O&M)

DATE OF DECISION : 18.12.2017

Gurpal Singh

.... APPELLANT

Versus

Avtar Singh

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Bhupinder Kaur, Advocate,
for the appellant.

* * *

AVNEESH JHINGAN, J.

The present appeal is at the behest of the defendant being aggrieved of the concurrent judgments and decrees passed by the learned courts below, decreeing the suit of the plaintiff.

For the sake of convenience, the parties are being referred to as per their original position in the civil suit.

A suit for possession was filed by the plaintiff praying for direction to the defendant to hand over vacant possession of the shop, shown in red colour in the site plan attached with the suit. The shop is situated in village Kaley, Tehsil and District Ludhiana.

The facts, as averred in the plaint, are that Avtar Singh (plaintiff) was owner of the disputed shop. He through his power of attorney Jaspal Singh filed the suit. The attorney was dated 19.01.2012. It was stated

that the defendant was inducted as tenant in the year 1995 at a monthly rent of ₹ 1,000/-. The present rent was stated to be ₹ 1,500/- per month and it was alleged that the rent was due from January, 2009. The defendant earlier filed a civil suit against the plaintiff for injunction. The defendant defaulted in payment of electricity charges, due to which the electricity connection was disconnected. A civil suit was filed by the defendant against the Punjab State Power Corporation Limited (PSPCL) and the plaintiff. At that stage, the plaintiff revoked the licence of the defendant and asked him to vacate the shop. A legal notice dated 28.02.2013 was served revoking the licence and asking the defendant to hand over the vacant possession of the disputed shop. Thereafter, the present suit was filed.

Upon notice, the defendant filed written statement. Apart from taking preliminary objections, it was averred that no proper and legal notice has been served upon the defendant. On merits, all the submissions made by the plaintiff were denied.

The learned trial court framed six issues.

In order to support the claim in the suit, the plaintiff himself deposed as PW.1. The original site plan, sale deed, copy of sale deed, copy of power of attorney, copy of jamabandi, legal notice and postal receipt were exhibited as Ex.P1 to Ex.P7, respectively. Parmod Kumar, Clerk to Shri Kamaljit Sharma, Advocate, was examined as PW.2 to prove the legal notice.

The defendant, in order to rebut the claim of the plaintiff,

himself stepped into the witness box as DW.1 and produced the bills as Ex.D1 to Ex.D1. Nachhattar Singh was examined as DW.2.

The learned trial court, after considering the facts and appreciating the evidence, decided issues No.1 and 2 in favour of the plaintiffs. Issues No.3, 5 and 6 were not pressed and issue No.4 was decided against the defendant. The net result was that vide judgment and decree dated 28.01.2015, the suit was decreed and the defendant was directed to hand over the vacant possession of the disputed shop within a period of two months to the plaintiff.

Aggrieved of the aforesaid judgment and decree, the defendant preferred an appeal. Learned Additional District Judge, Ludhiana, dismissed the appeal vide judgment and decree dated 26.10.2016.

Hence, the Regular Second Appeal.

Learned counsel, while arguing the present appeal, raises only one issue that the legal notice Ex.P6 served by the plaintiff was not a valid notice, as it was not signed by the Advocate. A copy of the notice was produced during the course of hearing.

No other issue was raised or argued.

From a perusal of the record of the learned courts below, it is evident that the legal notice Ex.P6 has been duly signed by the Advocate. In such circumstances, the contention raised by the learned counsel fails being against the factual position. Hence, since the notice has been duly signed and its service has not been disputed, there is no need to go into the legal

aspect raised by learned counsel that a legal notice, not signed by the Advocate, is not a valid notice.

During the course of hearing, learned counsel could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. She could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant second appeal is dismissed, however, with no order as to costs.

December 18, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No