

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

**RSA 5491/2017 (O&M)
Date of decision:27.11.2017**

M/s Gupta Agencies through Vijay Kumar, Partner

.....Appellant

v.

Amarjeet Singh Ahluwalia (since deceased) through Rohit Walia

.....Respondent

Coram: Hon'ble Mr. Justice Jaswant Singh

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

Jaswant Singh, J. (Oral).

Appellant/defendant is in second appeal against judgment of reversal dated 28.9.2017 passed by Additional District Judge, Kaithal whereby the suit of respondent/plaintiff for ejectment and recovery of rent and mesne profits was decreed and the judgment and decree dated 26.5.2014 passed by Additional Civil Judge (Senior Division) Kaithal, dismissing the suit was set aside.

In brief, plaintiff/respondent instituted the suit with the averments that he was owner of the demised shop which was let out to appellant/defendant at a monthly rent of Rs.1800/- and that the demised shop being located out of municipal limits of Pundri, no house tax was leviable or charged. It was alleged that defendant was in arrears of rent since 1.1.2010. His tenancy had been terminated vide notice dated 22.1.2010 under Section 106 of the Transfer of Property Act, 1882. It was

averred that plaintiff was entitled to recover rent from the defendant @ Rs.1800/- per month from 1.1.2010 till the termination of tenancy, amounting to Rs.5400/-. It was further averred that the plaintiff was also entitled to mesne profits @ Rs.6000/- per month from the date of termination of tenancy till the delivery of vacant possession of the demised shop. Interest on due amount was also claimed @ Rs.18% per annum.

Upon notice, defendant contested the suit by filing written statement. It was alleged that initially the rate of rent was Rs.800/- per month. The shop was situated within the Municipal Limits of Pundri town and provisions of Haryana Act No.11 of 1973 were applicable, construction being 10 years old. Service of valid and legal notice was also denied.

Plaintiff filed replication.

On the pleadings of the parties, issues were framed. Plaintiff led oral as well as documentary evidence in support of his case whereas defendant led no oral or documentary evidence. On the basis of the evidence on record, trial court dismissed the suit whereas in appeal the findings of the trial court were reversed and suit decreed. Hence the present appeal.

Heard learned counsel for the defendant/appellant and perused the paper book carefully.

The appellate Court on the basis of pleadings of the parties and evidence led by the plaintiff has found that defendant has not disputed the relationship of landlord and tenant but only disputed about the rate of rent and arrears of rent. Even in the cross examination of plaintiff-Amarjeet Singh, it was not suggested to him that he was not owner of the property in dispute and the only suggestion made to him was about rate of rent. As regards service of legal notice regarding termination of tenancy, in his reply

defendant had only pleaded that the same was not legal and valid. From this appellate Court has rightly inferred that legal notice was received by the defendant. The plaintiff examined Jai Bhagwan, Clerk MC Pundri as PW1 whose testimony proved that the shop in question was within the limits of Gram Panchayat Fatehpur and not in the limits of MC Pundri. Further no evidence having been led by the defendant in support of his case, the appellate Court has rightly held that an adverse inference has to be drawn against him. The factum of tenancy and service of notice upon defendant about termination of tenancy having been proved on record, the appellate Court has rightly decreed the suit of the plaintiff/respondent.

In view of the above, in my opinion, no question of law much less substantial question of law arises for consideration in this appeal.

Dismissed.

27.11.2017
joshi

(Jaswant Singh)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No