

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

205

RSA-1902-2012 (O&M)
Date of decision: 07.09.2018

AJAY KUMAR GUPTA

... Appellant

Versus

JARNAIL SINGH

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Deshpreet Singh, Advocate for
Mr. R.M. Sharma, Advocate
for the appellant.

Mr. Deepak Arora, Advocate
for the respondent.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against judgment and decree dated 21.12.2011 passed by the Additional District Judge, Jalandhar whereby the appeal preferred by the respondent/plaintiff against the decree and judgment dated 05.05.2009 passed by the Civil Judge (Jr. Div), Jalandhar (hereinafter to be referred as 'the trial Court') has been allowed and suit filed by the respondent/plaintiff was decreed with costs directing the appellant/defendant to put the respondent/plaintiff in vacant possession of property in dispute within one month.

The sole submission made by counsel for the appellant is that as the respondent/plaintiff did not issue a notice terminating tenancy much less in consonance with the provisions of Section 106 of the Transfer of Property Act, 1882 (in short 'the Act'), suit filed by the respondent/plaintiff for recovery of possession is liable to be dismissed on this score alone.

Counsel for the respondent/plaintiff has supported the decree passed by the Court in appeal whereby in para 14 of the judgment, it has been held that respondent/defendant has not denied receipt of notice.

The respondent/plaintiff raised a categorical plea in para 7 of the plaint that he served notice dated 09.09.2003 under Section 106 of the Act expiring in the last week of September, 2003 but the defendant/appellant has neither vacated the premises nor paid rent. In response to para 7, the appellant/defendant would state that the respondent has never served a notice under Section 106 of the Act.

The respondent/plaintiff during the course of evidence proved copy of notice Ex.P3 with postal receipt Ex.P4. Appellant Ajay Kumar Gupta tendered into evidence his affidavit ExDW2/A by way of examination in chief. In cross examination, he has denied the suggestion that Ex.P3 was served upon him. However, he has admitted that address of his college given in the notice is correct.

Under Section 27 of the General Clauses Act, 1897, there is a presumption that a duly addressed registered notice is deemed to be served upon the addressee but the said presumption is rebuttable. Counsel for the appellant has failed to point out any materials on record in order to rebut the presumption available in favour of sender of the notice. In this view of the matter, contention raised by the appellant that no notice terminating the tenancy was issued in compliance with the general principles of Section 106 of the Act is misconceived and accordingly stands rejected.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed. The decree and judgment passed by the Court in appeal stand affirmed.

07.09.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No