

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

**RSA No.4977 of 2012 (O&M)
Date of Order: 24.08.2018**

Sanjay Kumar Aggarwal

..Appellant

Versus

Prem Dass

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. V.K.Jindal, Sr. Advocate, with
Mr. Gopal Soni, Advocate,
for the appellant.

Mr. Arun Jain, Sr. Advocate, with
Mr. Dhruv Mittal, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below.

Plaintiff filed a suit for possession by way of ejectment with respect to shops No.4103/1 and 4103/2 claiming that the building in question is newly constructed and therefore, exempted from the provisions of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short Act of 1973) for a period of 10 years.

Defendant-appellant contested the petition and pleaded that it is an old construction, although he had taken it on rent subsequently.

Both the courts below after thoroughly examining the evidence available on the file found that the construction is new one and Act of 1973

is not applicable. The courts also found that the proper notice terminating the tenancy has been given and thereafter since tenant-appellant has no protection under the Act of 1973, therefore, the suit for possession was decreed.

This court has heard learned senior counsels appearing for the parties and with their able assistance gone through the judgments passed by the courts below and the record.

Learned senior counsel for the appellant has submitted that there is no evidence on the file to prove that the shops in question were constructed. Hence, he submits that initially the property was in possession of Kanwar Sain, who was running a weigh bridge and electric connection was disconnected which was got restored by the tenant-appellant on payment of Rs.3072/-. Learned senior counsel for the appellant referred to extensive evidence led by the parties and submitted that it is not proved on file that the construction is new one. He while referring to notices issued by Municipal Committee in the years 1991, 1992 and 1993 has submitted that those notices were with respect to different property which was on the back side and therefore, construction cannot be said to be new.

On the other hand, learned counsel for the respondent while referring to the lay out plans Ex.PW4/1 and Ex.PW4/2 has pointed out that in those lay out plans old as well as new construction has been separately depicted and it is apparent from the careful examination of the aforesaid lay out plans/building plans, which have been sanctioned by the Municipal Committee that dimensions of the shops, width of the walls are entirely different. He further referred to the oral evidence produced by the defendant-appellant wherein it is admitted that earlier shop was having old

conventional roof which has now been replaced with new lantered roof.

This court has considered the submissions of learned counsel for the appellant.

Plaintiff in order to prove their constructions has examined PW2 Raunki Ram, a clerk from the Municipal Committee who has proved that the building plan was sanctioned in January 1993. The suit was filed on 09.04.1999. Still further it is the case of the defendant-appellant that the construction is old one. However, defendant has failed to prove that fact. It is admitted case of the defendant that prior to defendant-appellant Kanwar Sain was running a weigh bridge and he got the electric connection restored that restoration of the electric connection is in the year 1993. Still further the notices given for unauthorized construction are also at the most going back to the year 1991.

In view thereof, this court does not find any good ground to interfere with the concurrent finding of fact arrived at by the courts below.

The regular second appeal is dismissed.

C.M.No.3973-C-2015 &
C.M.No.7699-C-2015

No order is required to be passed in view of the aforesaid judgment.

August 24, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No