

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

RSA No.179 of 2016(O&M)
Date of decision: 25.05.2018

Malkiat Singh

... Appellant

Versus

Radha Minhas

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sunil Agnihotri, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court, vide judgment and decree dated 12.09.2011. As even the appeal preferred against the said decree failed and was dismissed on 16.08.2014, the appellant-defendant is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for possession by way of ejectment of defendant from the shop marked A B C D, and shown in the red colour in the site plan. In brief, the case set out by the plaintiff was that the defendant took the premises in dispute i.e. a shop, on a monthly rent of Rs.325/-. Rakesh Singh, husband of the plaintiff, died in January 2001 in operation Rakshak while serving the Indian Army in J&K. The plaintiff approached the defendant for vacating the shop in the month of May 2001, and he agreed to vacate the same by 18.06.2001. And in terms of the said settlement, the plaintiff relinquished the rent due from 01.05.2000 to 08.06.2001. However, the defendant did not vacate the premises upto 18.06.2001. Therefore, he was in arrears of rent from 01.02.2002 to 31.01.2005 @ Rs.325/- per month with interest @ 12% per annum. Further,

as the tenancy of the defendant was terminated pursuant to a notice, dated 19.07.2001, issued under Section 106 of the Transfer of Property Act 1882, which was not responded to, thus, the suit.

In defence, it was pleaded by the defendant that the plaintiff had no *locus standi* to institute the present suit, as she was not the owner of the premises in dispute, and rather it was owned by BBMB, Talwara. Further, the suit was time barred and not within limitation.

On a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that the most crucial documents on record were of the civil suit filed by the defendant for injunction against the present plaintiff and her attorney. The statement of defendant Malkiat Singh in Civil Suit No.165 of 2001 titled “**Malkiat Singh v. Radha Minhas**”, was duly proved, which showed that the defendant had conceded the factum of compromise having been effected *inter se* the parties. Further, that an application was moved by the plaintiff to the Gram Panchayat, Shripandain and a compromise was arrived at on 18.05.2001 between the plaintiff and the defendant. Further, three days thereafter Gram Panchayat even settled their dispute regarding rent vide writing 21.05.2001 that was written by the Sarpanch of the Village. A certified copy of the agreement dated 18.05.2001 (Ex.P7) was produced by the plaintiff, which showed that it was agreed that defendant-Malkiat Singh was a tenant under the plaintiff and would vacate the shop on 18.06.2001. Likewise, the compromise dated 21.05.2001 (Ex.P8) showed that the entire dispute regarding rent stood settled. Thus, in terms of Section 116 of the Indian Evidence Act, the defendant was stopped from questioning the title of the plaintiff except by first surrendering the possession of the premises. Nothing

was brought on record by the defendant to show as to how the suit filed by the plaintiff was time barred. As regards notice dated 19.07.2001, under Section 106 of the Transfer of Property Act, the same was allegedly served upon the defendant through his counsel. The postal receipts (Ex.P12) as regards said notice were duly proved on record. The said notice was even sent through UPC, which was not received back. Thus, in terms of Section 27 of the General Clause Act, the same would be presumed to have been duly served. Concededly, the suit property was situated within a rural area, hence the provisions of Rent Act had no bearing, and tenancy having been validly terminated, the occupation and possession of the defendant on the premises in question was wholly illegal and unlawful. That being so, the only and the inevitable conclusion that could be reached was; the suit was required to be decreed. On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality.

Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

25.05.2018
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO