

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

RSA No.3177 of 2017 (O&M)

Date of Decision: 18.07.2018

Rajinder Kumar

... Appellant

Versus

Amrik Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. G.S.Nagra, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

Defendant Rajinder Kumar is in second appeal before this Court.

Brief facts are that plaintiff Amrik Singh filed a suit for ejectment against defendant as regards the shop in dispute as per details furnished in the head note of the plaint and situated at Bela Road, Chamkaur Sahib. Plaintiff averred that he was the sole owner of such shop and which had been purchased from defendant vide registered sale deed dated 26.04.2001. After the purchase and upon asking of the defendant, the shop was let out on a rent of Rs.1000/- per month on 11.05.2001 for a period of 01 year. Plaintiff asserted that defendant had not paid any rent and as such was in arrears from the date of inception of tenancy. Ejectment was sought for personal use and bonafide necessity of the plaintiff as also to settle his son. Plaintiff is stated to have served a notice under Section 106 of the Transfer of Property Act dated 13.05.2005 terminating the tenancy. Since no response was

forthcoming from the defendant, the suit for ejectment and recovery of arrears of rent to the tune of Rs.48,000/- was instituted.

Suit was contested by the defendant (present appellant) by filing a written statement and raising the preliminary objection that suit itself is not maintainable as plaintiff earlier had filed a petition raising the same very plea and which had been dismissed as withdrawn.

On merits it was admitted that the plaintiff purchased the shop in question from the defendant.

In the written statement, a stand was taken that the rent had been paid regularly but no receipt had been issued.

Upon the pleadings of the parties, the following issues were framed by the trial Court:-

- 1. "Whether the plaintiff is entitled for possession of suit property as prayed for and is also entitled for the recovery of arrears of rent to the tune of Rs.48,000/- i.e. from 10.05.2001 to 11.05.2005? OPP***
- 2. Whether the suit is not maintainable? OPD***
- 3. Whether the suit is time barred? OPD***
- 4. Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD***
- 5. Whether no notice was served upon the defendant? OPD***
- 6. Relief."***

Suit of the plaintiff was decreed vide judgment and decree dated 25.09.2015 passed by the trial Court. Civil appeal preferred by the defendant has been dismissed by impugned judgment dated 16.11.2016 passed by the learned District Judge,

Rup Nagar. Resultantly, the present appeal at the hands of defendant Rajinder Kumar.

Counsel for the appellant has been heard at length and the records have been perused.

The concurrent findings recorded by the Courts below upon appreciation of evidence adduced is that sale deed Ex.P-1 dated 26.04.2001 stands duly proved showing that the shop in question has been purchased by plaintiff/respondent from the defendant/appellant. Even the rent note Ex.P-4 stands duly proved reflecting that the shop had been rented out by respondent herein to appellant @ Rs.1000/- per month. Tenancy was only for 01 year i.e. up to 10.05.2002. Present appellant in his deposition before the trial Court admitted his signatures on rent note Ex.P-4. Even though in the written statement a stand had been taken that payment of rent had been made on a regular basis but no document was adduced to prove payment of rent. Even no witness had been examined in whose presence rent had been tendered.

It would be apposite to take notice that even though at the time of filing the original written statement to the suit, the defendant (present appellant) had taken a stand that payment of rent had been made on a regular basis but thereafter an application was filed under Order 6 Rule 17 CPC to seek amendment in the written statement and to change his stand to the effect that at the time of execution of the sale deed he was only paid a sum of Rs.90,000/- in addition to the earnest money of Rs.1, 24,000/- given by him earlier in point of time and the

remaining amount of total sale consideration of Rs.4 lakhs was to be adjusted in future rent.

During the course of hearing, Mr. G.S.Nagra, learned counsel representing the appellant concedes that such application under Order 6 Rule 17 CPC was dismissed and which order attained finality.

Further more as per sale deed duly proved on record Ex. P-1, the entire sale consideration reflected was only Rs.90,000/- and was paid to the present appellant at the time of fixing execution. Also proved on record is the notice Ex. P-3 and postal receipt Ex. P-4 as regards notice under Section 106 of the Transfer of Property Act. The acknowledgement receipt was also annexed along with receipt Ex. P-4 which bore the signatures of the defendant (present appellant). A finding of fact having been recorded by the Courts below that the notice under Section 106 of the Transfer of Property Act had been duly served, the tenancy in law had come to an end.

Under such circumstances, the Courts below have rightfully decreed the suit of the plaintiff/respondent for ejectment and for recovery of outstanding rent.

Even the preliminary objections as regards the suit being not maintainable and the plaintiff having earlier filed a petition raising similar prayer and having withdrawn the same is without substance. In this regard, it may be noticed that the plaintiff had earlier filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act. The same was dismissed as

withdrawn with permission to file suit after serving notice under Section 106 of the Transfer of Property Act as the Rent Restriction Act was not applicable to the area where the shop was situated. Even the order withdrawing the petition with permission to file fresh suit for ejectment was duly adduced on record as Ex. P-5.

The judgment passed by the trial Court decreeing the suit of the plaintiff/respondent for ejectment of the present appellant from the shop in dispute and for recovery of arrears of rent as also the judgment passed by the Lower Appellate Court affirming the judgment and decree of the trial Court are well reasoned and based on due appreciation of evidence.

No interference in the same is warranted.

The instant appeal does not raise any question of law much less substantial question of law.

Appeal is dismissed.

Since the main appeal is decided itself, pending application(s), if any, shall also stand disposed of.

18.07.2018
vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No