

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

RSA No.946 of 2011 (O&M)

Date of Order: 26.03.2019

Parihlad Premi

..Appellant

Versus

Pawan Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Parminder Singh, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below dismissing the suit filed by him for grant of mandatory injunction directing the defendants to demolish and remove the stair case which has been constructed for climbing upto the first floor.

Undisputed facts are that the plaintiff claims tenancy rights from Punjab Wakf Board vide allotment letter dated 07.11.1981. Entire claim of the plaintiff is based upon this rent note/allotment letter which gives dimensions of the property leased. Plaintiff claims that since he remained busy on account of murder case of his wife, therefore, the defendants forcibly entered into the shop and constructed a stair case in December, 2002 and consequently the area in the possession of the plaintiff

has been reduced.

Defendants contested the suit and pleaded that the stair case was constructed in the year 1981 with the agreement of Kishori Lal son of Piara Lal, who was previous tenant on the shop.

Both the courts on appreciation of the evidence have found that the plaintiff has failed to establish its case. It may be noted here that the plaintiff examined PW1 Om Parkash, who could not deny that previously the shop in question was in possession of Kishori Lal son of Piara Lal as he feigned his ignorance.

Learned counsel appearing for the appellant has submitted that the agreement with Kishori Lal has not been proved and once the area which has been allotted to the appellant is not complete, the obvious inference is that the stair case has been constructed subsequently.

This court has analyzed the arguments of learned counsel, however unable to agree with the same.

No official of the Wakf Board has been examined to prove that on the day the shop was given on lease, there was no stair case in existence. Official of the Wakf Board would have been the best person who could help the court in arriving at a conclusion that the stair case was got constructed after the lease in favour of the plaintiff or before it. The inference which learned counsel for the appellant wants to draw from the allotment letter, cannot be drawn. Still further, the plaintiff has to stand on his own legs. Here is the case where plaintiff wants to get the stair case demolished which has been constructed. The plaintiff have miserably failed to prove by cogent evidence that the stair case was constructed after the plaintiff took the shop in question on lease.

In such circumstances, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

March 26, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No