

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

RSA No.5041 of 2015 (O&M)

Date of Decision: September 16, 2019

Rajinder Singh @ Sheru

....Appellant

Versus

Jiwan Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Vishal Gupta, Advocate for the Appellant.
Mr. Sunil Chadha, Senior Advocate assisted by
Mr. Saurav Kanojia, Advocate for the Respondent.

SUDIP AHLUWALIA, J.

This Appeal has been preferred against the Judgment and Decree passed by the Ld. District Judge, Kapurthala in Civil Appeal No.7333 of 2013 dated 30.07.2015, vide which, the original Judgment & Decree passed by the Ld. Addl. Civil Judge (Senior Division) Kapurthala in Civil Suit No.256 of 2010 dated 22.10.2013 in favour of the present Respondent/Plaintiff were upheld.

2. The Suit for eviction filed by the Respondent was decreed against the Appellant by the Ld. Trial Court, whose decision in turn was upheld by the Ld. Appellate Court. The case all along of the Appellant has been that he never was a tenant under the Respondent/Landlord at any time, and that his father namely Harduman Singh, was the actual Tenant for almost 36/37 years before the Suit was filed in 2010, and consequently, neither the Suit against the Appellant, who was not the actual Tenant, nor the Eviction

Decree subsequently passed against him and affirmed by the Appellate Court, are sustainable.

3. Both the Ld. Courts below after going through the evidence on record had decided the dispute regarding identity of the actual Tenant in the demised Shop, in favour of the Respondent/Landlord and held that it was the Defendant/Appellant and not his father Harduman Singh, who was the actual Tenant, and thereafter both the Ld. Courts below ordered his eviction on the grounds made out by the Landlord.

4. The grievance of the Appellant before this Court as can be seen from the Orders passed earlier on 14.1.2016 and 23.8.2016, is that both the Ld. Courts below had placed heavy reliance only upon the Legal Notice (Ex.P-2) and its Reply (Ex.P-5) led into evidence on behalf of Plaintiff/Respondent, and had not appreciated the documents in the form of Ex.D-1 to Ex.D-9 led on behalf of the Appellant. This Court has perused the entire set of documents led from the defence side (Ex.D-1 to Ex.D-9). These happen to be copies of certain FIRs (Ex.D-2 to Ex.D-4) lodged by the contesting parties and their family members against each other, the Judgments of Courts (Ex.D-8 and Ex.D-9) in the Criminal Proceedings arising out of those FIRs, copy of the Police Report in one of the FIRs dated 18.3.2006 (Ex.D-1), the Electric Bill and its Receipt showing existence of Electrical Connection in the name of Appellant's father Harduman Singh in the demised premises (Ex.D-5 to Ex.D-7).

5. It may be mentioned that in the FIRs, there are stray references to appellant/his father being in occupation of the demised Shop as Tenant. But none of the FIRs was lodged by the Respondent/Landlord

himself. One of those FIRs was apparently lodged by the Respondent's son, in which the Appellant's father was referred to as a Tenant. Admittedly, the Electric Connection in the demised Shop stands in the name of Appellant's father. But the Respondent/Appellant in his cross-examination as PW1 while admitting the said fact had also stated that the said Harduman Singh had occupied the Shop some 6/7 years earlier (to the date of deposition) i.e. 30.4.2012. There is nothing on record to show that the demised Shop was occupied by Harduman Singh as a Tenant as far back as in the year 1973-74 as claimed by him, nor there is any document to show that at all the said Shop was in existence since the time Harduman Singh claimed to have been inducted as a Tenant i.e. in the year 1973-74. As such, any stray reference by the Appellant's son in an FIR lodged subsequently to the Appellant's father as a Tenant would not be of much consequence especially considering the Appellant's own admission in Para 1 of his Examination-in-chief as DW2 to the effect that *"I being the son only some time assist my father in the Shop in dispute....."*

6. On the other hand, in his Reply to the Appellant's Legal Notice (Ex.P-5) signed by the Appellant himself, which is in Punjabi, it is seen that he had communicated in Para 1 that *"I have been paying the agreed rent to your client."* In Para 3 of the same Reply, the Appellant had further gone on to state that *"I have never committed any kind of default/omission and had never promised to vacate the Shop."* It was nowhere mentioned in the Reply that the Appellant was not a Tenant under the Respondent, or that it was his father

Harduman Singh, who was the actual Tenant.

7. Further, the Appellant's own father Harduman Singh gave evidence in his support as DW1, but it is interesting that in spite of claiming to be the actual Tenant and being aware of Eviction Suit filed against his son in which he himself was deposing, he never thought it fit to get himself to be added as a party. In such circumstances, Appellant's failure to lead any kind of documentary evidence whatsoever on record, such as by way of Rent Receipt in his father's name for a long period of 36/37 years, prior to filing of the Suit, or any document to show even the existence of the premises at the time when his father had claimed to have been inducted as Tenant (1973-74) would not help his case, especially in view of specific evidence of the Landlord that the Shop in question had been constructed only 15/16 years earlier.

8. The Appellant has relied upon the decisions of this Court in **'Kanta Devi Versus Lajwanti and others' 2013 (18) SCT 506** and that of Supreme Court in **'Basant Singh Versus Janki Singh and others' 1967(1) SCR 1** to contend that the admission made by him and relied upon by the Respondent in his Reply to the Legal Notice of having paid the rent to the Landlord all along ought not to be used against him, since he had made out a specific case in his Written Statement that the contents of the Reply were explained by him to the Typist, who had mistakenly typed the Notice as understood by him. But even this contention is untenable because if the mistake was on the part of the Typist as claimed by the Appellant, the said Typist himself would have been the appropriate person to depose as to what

exactly was communicated to him and whether or not he had correctly understood the instructions. But the Typist in question was not examined on behalf of the Appellant to support his bald explanation.

9. For the aforesaid reasons, this Court finds no justification to interfere with the concurrent findings of both the Ld. Courts below, on the basis of which, the Appellant has been directed to vacate the demised Shop.

10. The Appeal is, therefore, dismissed with a direction upon the Appellant to peacefully deliver possession of the demised Shop to the Respondent latest by 31.10.2019, failing which, appropriate proceedings in accordance with law may be pursued against him.

(SUDIP AHLUWALIA)
JUDGE

September 16, 2019
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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |