

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

RSA No.1034 of 2017 (O&M)

Date of decision:11.02.2019

Baldev Singh

Vs.

... Appellant

Harminder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Narinder Kumar Vadehra, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant has not been able to defend the suit for ejectment claiming possession of two shops alongwith arrears of rent at the rate of Rs.800/- per month for each shop alongwith interest @ 9% per annum w.e.f. 24.12.2012 till actual realization.

It was alleged that plaintiff had purchased two shops, vide registered transfer deed dated 24.12.2012. The defendant was inducted as a tenant but did not tender the rent from 24.12.2012 nor vacated the premises despite being served with a legal notice dated 31.08.2013. The defendant denied the ownership of the plaintiff and alleged that he had taken the shops on rent @ Rs.800/- per month from Surjeet Singh (father of the plaintiff) and had been paying the rent to him but no receipts were issued. The relationship of landlord and tenant between the defendant and Surjeet Singh was admitted but with the plaintiff denied.

The plaintiff in support of the evidence examined Gurmeet Singh as PW1 and himself appeared as PW2 whereas defendant examined two witnesses.

During the pendency of the appeal, an application for additional evidence to place on record the decision rendered in the civil suit for permanent injunction between the same parties and as well as re-framing of the issue with regard to locus-standi was filed. Five additional issues were framed.

Mr. Narinder Kumar Vadehra, learned counsel appearing on behalf of the appellant-defendant submitted that respondent-plaintiff did not place on record the original title/transfer deed and therefore, failed to prove the ownership, much less relationship of landlord and tenant. The rate of rent claimed was Rs.4,000/- i.e. Rs.2,000/- for each shop, whereas, the trial Court confined it to Rs.800/-. A person/landlord who does not come to the Court with clean hands particularly qua rate of rent is required to be non-suited on this ground alone. No opportunity has been given to lead evidence with regard to additional issues. The additional evidence is essential and necessary for adjudication of the lis.

I am afraid the aforementioned arguments are not sustainable, for, decree is not only confined to the ejectment but also arrears of rent agreed by the respondent. Surjeet Singh is none-else but father of the plaintiff and the status of tenant cannot be changed with the title of the property as he was tenant “Holding Over”. Since no rent was paid necessitating the plaintiff to claim the arrears, the defendant has not been

able to establish any ground to non-suit the plaintiff. Even the additional evidence taken on record would not help to belie the case of the plaintiff.

As regards point of preventing the defendant to lead evidence with regard to framing of additional issues, following issues were framed:-

“4A) Whether the plaintiff has got locus standi to file the present suit? OPP

4B) Whether a cause of action has arisen to the plaintiff to file the present suit?OPP

4C) Whether the suit is properly valued for the purpose of jurisdiction and court fee?OPP

4D) Whether the suit of the plaintiff is bad for misjoinder and non-joinder of necessary parties?OPD

4E) Whether the parties estopped by his own act and conduct from filing the present suit?OPD”

The aforementioned issues are formal in nature for which evidence had already been led but no such provisions of law has been pointed out as to how the defendant was able to discharge the onus qua aforementioned issues.

As an upshot of my findings, arguments of Mr. Vadehra, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 11, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No