

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

RSA 4205 of 2016 (O&M)

Date of Decision: December 07, 2021

Kailash Chand

...Appellant

Versus

Sunil Kumar

... Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Mr. V.K. Jindal, Sr. Advocate with
Mr. Akshay Jindal, Advocate
for the respondent.

FATEH DEEP SINGH, J. (Oral)

CM 4147-C of 2020

The applicant/appellant through the instant invocation sought to place on record certain photographs as well as site plan which are also exhibited before the trial Court and, thus, being a frivolous prayer not necessitating anything afresh does not calls for any indulgence. The application being without merits stands dismissed.

RSA 4205 of 2016

The premises subject matter of the present regular second appeal comprising of a built up property bearing No. 5 situated at Dayal Singh Colony Karnal. The property was originally owned by one Avinash Chand who transferred it in favour of Kailash Chand, the present appellant then defendant on the basis of gift deed dated 28.01.2010 and judgment and decree dated 24.02.2010 and that is how defendant now appellant happens to be a landlord and plaintiff-respondent Sunil Kumar his tenant which relationship dates back to the year 2005.

The tenant had filed a suit for permanent injunction seeking a decree for permanent injunction restraining the defendant from dispossessing the plaintiff from the suit property. The defendant landlord though accepts in his response the relationship but denies he is trying to oust the plaintiff or is doing any act on his premises to the detriment of the tenant. The Court of learned Additional Civil Judge (Senior Division) Karnal vide order dated 03.11.2011 framed the following issues:-

1. Whether the plaintiff is entitled to a decree for permanent injunction thereby restraining the defendant from dispossessing the plaintiff from the suit land, detailed and described in para No.2 of the plaint and also from changing the nature of the suit land?OPP.
2. Whether the plaintiff has no locus-standi to file and maintain the present suit? OPD.
3. Relief.

In order to prove its case, the plaintiff has examined himself as PW1 on the basis of affidavit PW1/A and proved site plan Ex. P1, copy of assessment Ex.P2 and thereafter examined PW2 Gopal Krishan, Assistant from M.C. Karnal who proved the house tax assessment register Ex. P-2 followed by the testimony of PW3 Gurnam Singh, Post Head Post Office Karnal and thereafter PW4 Ram Kumar Kamboj Draftsman proved the site plan Ex.P1 and P-16 and PW5 Sunil Kumar, M.E., M.C., Karnal proved his report Ex.PW5/A.

The defendant examined himself as DW1 through

his affidavit Ex.DW1/A.

Vide judgment dated 16.02.2016, the Court of learned Civil Judge, Junior Division, Karnal decreed the suit with no order as to costs.

Upon appeal by the landlord Kailash Chand, the Court of learned Additional District Judge, Karnal vide impugned judgment and decree dated 30.03.2016 dismissed the same and that is how, the instant RSA has come up before this Court.

Upon hearing Mr. Sunil Panwar, Advocate for the appellant and Mr. V.K. Jindal, Sr. Advocate with Mr.Akshay Jindal, Advocate for the respondent and upon perusal of the records.

In the light of admitted legal proposition as has been laid down in '**Kirodi (since deceased) through his L.R. Vs. Ram Parkash and others**' Civil Appeal No. 4988 of 2019; SLP(C) No. 11527 of 2019 decided on 10.05.2019, the Court is not supposed to frame substantial question of law in view of the provisions enshrined under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and

Haryana.

From the pleadings of the parties, the evidence led on the record and the own arguments advanced by the two sides it is an admitted fact that there exists a relationship of landlord and tenant between the parties. The arguments have been advanced that the appellant being the landlord under the guise of reconstruction/renovation of his premises is demolishing portion of tenanted premises under occupation of the tenant. It is there and is well established that the landlord had initially filed before the Rent Controller Karnal a petition for eviction and which was pending before the instant suit, out of which, the appeal has arisen was filed. Thus, there appears a desperate endeavor of the two sides to have an upper hand.

The tenant had through the site plan proved that the total area is under his occupation as a tenant which is in red colour and which fact could not be controverted by Mr. Sunil Panwar, counsel for the landlord. Since, the possession of the tenant in the red portion by way of shop in the site plan exhibited as Ex.P1, it is so depicted, while the portion depicted

by way of yellow colour though is claimed by the tenant as a common portion but the tenancy is established to be over only shop on ground floor and three rooms on first floor. Since the landlord is trying to evict the tenant and had filed eviction petition and during the course of which the instant suit has come about, the Court need to be weary that under the garb of carrying of renovation/construction the landlord might not pull down the premises under the occupation of the tenant or carry on an activity which might hamper the free and independent use of the tenant of the tenanted premises as per his wishes and requirements but at the same time the landlord has the legal right to carry on renovation/construction over his portion under his occupation. Though much vehemence has sought to be laid that the tenant has placed a generator on the roof of the landlord are matters which are not subject matter to adjudication before this Court. What the Court has to see in a pure simplicitor suit for permanent injunction is the three elements, *prima facie* case, irreparable loss and balance of convenience. Since the tenant has been inducted in a lawful manner and is not a

trespasser in the property and, therefore, cannot be thrown out at the whims and fancies of the landlord. The tenant has a right to protect his possession as well as property as long as his tenancy subsists therein. The plea of the landlord that he wishes to demolish the part of the building under his occupation to make the premises more usable could not be successfully controverted by the other side. Though, this Court refrains itself from commenting on this aspect of the matter. The appellant being owner and landlord has a right to repair, reconstruct, renovate his building under his occupation as a owner according to the Municipal Laws but at the same time is supposed to ensure that no damage is caused to the tenanted premises under occupation of the tenant nor any inconvenience is caused to the tenant or his customers. The learned lower Court and so is in the impugned findings of the learned first appellate Court had drawn justifiable conclusions and in spite of best endeavors of the lower Courts to ensure an amicable settlement could not be made out which is well reflected in the impugned findings under challenge. The impugned findings are modified as above

and with this there appears to be no illegality or perversity in the findings under assail.

The appeal is accordingly dismissed with this modification.

December 07, 2021
amit rana

(FATEH DEEP SINGH)
JUDGE

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