

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

**RSA-3772-2016 (O&M)
Date of decision:25.01.2024**

Kulwant Singh Minto

... Appellant

Vs.

Parmodh Kumar & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Vishal Sharma, Advocate for the appellants.

...

SUKHVINDER KAUR, J.

1. This is a regular second appeal filed by the appellant/plaintiff against the concurrent finding recorded by both the Courts below vide which suit of the plaintiff was partly decreed.

2. Brief facts of the case as per plaint are that the plaintiff is carrying a business of selling/purchasing new as well as old wooden planks in the shop under the name and style of Kulwant Singh Minto and Sons, situated at Katra Karam Singh, Bazar Shaterian Wala, having Khana Shumari No.577/78/VIII-4 MCA, Amritsar as tenant @ Rs.600/- per month under one landlord Jagdish Kapoor. Earlier father of the plaintiff was carrying on the business therein being tenant @ Rs.500/- per month, on the basis of rent note dated 30.10.1989 and after death of his father on 06.02.1998, plaintiff stepped into shoes of his tenancy. Earlier Sham Sunder S/o Mela Ram was landlord of the shop in question, who sold the said shop and now the plaintiff is paying rent on the increased rate of Rs.600/- per month to his landlord - Jagdish Kapoor. The defendants declared that they

have purchased the shop in question and the building where the said shop is situated from Jagdish Kapoor and started threatening to dispossess him from the shop in question forcibly and to dismantle/demolish the same. Hence, the suit seeking relief of permanent injunction was filed by the plaintiff/appellant.

3. Vide judgment and decree dated 08.07.2014, suit of the plaintiff was partly decreed in favour of the plaintiff. The appeal was preferred before the First Appellate Court which was dismissed vide judgment and decree dated 19.01.2016. Hence, the plaintiff/appellant is in second appeal before this Court.

4. Learned counsel for the appellant has contended that both the Courts below have failed to appreciate the oral and documentary evidence produced on record by the appellant to prove that the area of the tenanted shop is 9x43 sq. feet. Plaintiff appeared as his own witness to support his pleadings and his deposition was duly corroborated with the testimony of PW1 Prince Sharma and PW3 Gurpal Singh, who also deposed on the similar lines as that of the plaintiff. He has further contended that DW4 Vinod Kumar had also admitted the dimensions of site plan Ex.PX filed by the plaintiff, which proves that area of the shop was 9x43 sq. feet and no contrary evidence was led by the defendants. He has argued that perusal of the rent note dated 30.10.1989 also shows that the tenanted premises are having the dimensions 9x43 sq. feet. The possession of the same had already been delivered to the plaintiff and the possession of 9x14 feet was already under tenancy with Hardeep Singh father of the plaintiff. He has further argued that earlier rent note dated 20.01.1999 could not be produced and as

it is necessary and relevant for proper adjudication of the controversy, so it may be taken on record.

5. I have heard learned counsel for the appellant and gone through the records thoroughly.

6. The dimensions of the shop in dispute were not mentioned in the plaint. But when the defendants specifically pleaded in the written statement that shop was measuring 9x12-14 sq. feet and backside of the shop is residence which was previously being used by the previous owner Paramjit Singh S/o Gurdial Singh, only then in the replication, the dimensions were specifically mentioned on the basis of the rent note Ex.P1. Perusal of the rent note Ex.P1 reveals that at the time of execution of the rent note, the space given was 9x12 sq. feet and the remaining area was to be given subsequently, after removal of the wall. It has been nowhere specifically pleaded by the appellant that when the possession of the rest of the property was handed over to the appellant. No date, month and year of handing over to the appellant or his father has been mentioned. No such evidence has been produced by the plaintiff that he had obtained the possession of the remaining portion of the demised shop subsequently. Even if during his cross-examination DW4 Vinod Kumar had stated that the dimensions of the site plan Ex.PX are correct, but it is well settled law that the plaintiff is to prove his own case. So the aforesaid cross-examination of DW4 is not sufficient to prove the possession of the plaintiff over the entire area with dimensions of 9x43 sq. feet. Even no question to any of the witnesses of the defendants was put that on which specific date, the possession of the remaining portion of the property was delivered to the

plaintiff. PW1 in his cross-examination has shown his ignorance with regard to the date, month and year of the execution of the rent note. He had also stated that he did not know that the defendants admitted tenancy in the area of 9x14 sq. feet. PW4 has also stated that he did not know that the backside portion of the shop was under the possession of the landlord as he had not seen the same. So from the perusal of the testimonies of these witnesses, it transpires that they were not aware of the complete facts with regard to dimensions of the shop in question. PW3 Gural Singh has also not stated anything about handing over of rest of the area as mentioned in the rent note Ex.P1 and in his cross-examination, he has stated it to be correct that except the shop, the entire upper portion of the building was in possession of the defendants and he did not know the entire area of the building and he has shown his ignorance with regard to terms and conditions of the rent note and the same was not executed in his presence.

7. DW3 Manohar Lal in his affidavit has specifically stated that dimensions of the shop are 9x12-14 and no suggestion was given to him that the dimensions were 9x43 square feet. Even DW4 Parmod Kumar has not stated that plaintiff was in possession of the shop as per the site plan.

8. The rent note dated 20.01.1999 which the appellant wants to produce on record was very much in existence at the time of filing of the suit and at the time of adducing evidence by the appellant. Had the appellant exercised due diligence, then he could have produced the said document earlier.

8. No question of law much less substantial question of law arise for determination in the present second appeal. The appeal is without any

merits and is hereby dismissed.

9. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

25.01.2024
harjeet

1. Whether speaking/reasoned?

Yes/No
2. Whether reportable?

Yes/No