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

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Date of Decision: 31.01.2024.

Hari Singh

...Appellant.

Versus

Gayatri Devi and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Vinod Kumar, Advocate
for the appellant.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/defendant against the concurrent findings recorded by both the Courts below, vide which the suit of the plaintiffs was decreed.

2. Brief facts of the case as per plaint are that originally Jagan Nath, father of plaintiffs, was owner-in-possession of suit land and after his death, plaintiffs became absolute owners of the suit property. Jagan Nath had inducted Milkhi Ram as tenant in the suit property for a period of 11 months from the date of execution of rent note, which had been executed on 28.11.2023 by Milkhi Ram in favour of Jagan Nath. Milkhi Ram had died in 1993 leaving behind the defendant as his successor-in-interest and the defendant came into possession of suit property as tenant and started paying rent to the plaintiffs. He had paid the rent regularly till April, 2002 but thereafter, he stopped paying the rent to the plaintiffs. So notice under Section 106 of Transfer of Property Act was served upon the defendant

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through his counsel. Thus, tenancy of defendant was terminated. The defendant is in arrears of rent and is liable to be evicted from the suit land on the ground of non-payment of arrears of rent. The plaintiffs also requires the suit land for their own personal use and occupation, so the present suit for possession was filed by the plaintiffs against the defendant.

3. The suit of respondents/plaintiffs was decreed and the counter claim of the appellant/ defendant was dismissed by the trial Court, vide judgment and decree dated 20.01.2011. The appeal preferred by the appellant/ defendant before the First Appellate Court was dismissed, vide judgment and decree dated 15.09.2022. Hence, the present Regular Second Appeal.

4. I have heard learned counsel for the appellant and has also gone through the records thoroughly.

5. Learned counsel for the appellant/defendant has contended that the lower Courts have given undue weightage to the untrustworthy and incredible evidence of the respondents and evidence of the appellant has been ignored without any cogent reason. He has further contended that it has been established on record that the suit land is in possession of defendant as a co-sharer and the respondents are not landlords of the appellant. The suit land was never let out by Jagan Nath, father of the respondents, in favour of Milkhi Ram, predecessor-in-interest of the defendant nor any rent note dated 28.11.1993 was ever executed by Milkhi Ram, so the respondents have been wrongly considered as landlords. He has submitted that the appellant is in possession of the suit land in his own right

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as a co-sharer in possession. The suit land used to be the joint property of three Tarafs of Brahmins, Chang and Rajputtan and father of the defendant, being Rajput, occupied the suit land as exclusive owner and raised construction over it and also used it exclusively for commercial purposes denying the rights of other co-sharers and his possession over the suit property was hostile, open, uninterrupted and continuous. After the death of his father, the appellant is occupying the suit land as exclusive owner with which the respondents have no concern. Even DW-1 Surjit Singh, Kanugo has proved Local Commissioner's report Ex.D1 to the effect that the shops were existing in Khasra No.1305 and the same had been purchased by the defendant, vide sale deed dated 18.12.2009, Ex.D5, which has been duly proved by DW2-Suresh Kumar, Nambardar, attesting witness and DW3-Satish Chander Vendor. But the trial Court has wrongly decreed the suit of the respondents/plaintiffs and has dismissed the counter claim of the appellant and the First Appellate Court has also wrongly dismissed the appeal.

6. The perusal of the revenue record i.e. jamabandis Ex.P4 and Ex.P5 reveals that the name of Jagan Nath has been reflected in the column of ownership regarding the suit land. As per the site plan Ex.PA, suit land has been shown in red colour and two shops are existing in the suit land, which are admittedly in possession of the defendant.

7. As per the plaintiffs, Jagan Nath had inducted Milkhi Ram predecessor-in-interest of defendant in the suit property as tenant and Milkhi Ram had executed rent note Ex.P1 in favour of Jagan Nath. To prove

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the rent note Ex.P1, its scribe Puran Chand Sharma was examined as PW3, who has also proved entry of name of the plaintiffs in his register Ex.P2. Further, the plaintiffs have examined Balwant Singh as PW1, who had deposed that Milkhi Ram had executed rent note Ex.P1 in favour of the deceased Jagan Nath in his presence as well as in the presence of Puran Chand Sharma, which bears his signatures. Thus, plaintiffs have duly proved rent note Ex.P1.

8. The appellant/ defendant had also taken the plea of adverse possession and has alleged that previously Milkhi Ram and after his death defendant is in open, continuous and hostile possession over the suit land. But no such specific date has been pointed out when possession of the defendant turned hostile against the plaintiffs. There is no entry in the revenue record that Milkhi Ram or the defendant ever remained in hostile possession, rather as per jamabandi Ex.D3 and Ex.D4 brought on record by the defendant, possession of Milkhi Ram over the suit land has been recorded as *Gair Marusi* under Jagan Nath co-sharer.

9. Though defendant now claims to be in possession over the suit land being a co-sharer on the strength of sale deed Ex.D5 but the said sale deed has not been pleaded anywhere in the written statement or the counter claim. So the evidence of the plaintiff qua the said sale deed is beyond the pleadings and is not admissible. The said sale deed was executed on 18.12.2009 during the pendency of this suit by one of the co-sharers namely Subhash Chander in favour of the defendant, so on its basis, defendant cannot claim to be in possession over the suit property being a co-owner,

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when this sale deed was not in existence at the time of institution of the present suit.

10. When this plea has been taken by the defendant that he has become owner of the suit property by purchase vide its sale deed Ex.D1, it is established that the defendant is in arrears of rent from May, 2002 @ Rs.20/- per month.

11. As per plaintiffs, the tenancy of defendant was terminated by serving notice Ex.P2 upon the defendant through registered letter Ex.P3 under Section 106 of the Transfer of Property Act as they bonafidely required the suit land for their own use and occupation and the defendant is in arrears of rent. Reply dated 29.01.2009 Ex.P2 was sent by the defendant. Therefore, the tenancy was terminated as the defendant had failed to hand over the vacant possession of the suit land to the plaintiffs after stipulated period of 30 days prescribed under notice dated 06.01.2003.

12. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

13. Appeal stands dismissed.

14. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

31.01.2024.

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No