



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

312

**RSA-2471-2023 (O&M)
Date of decision : 25.08.2205**

Vijay Sood**..... Appellant**

versus

Harjit Kaur and another**..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Animesh Sharma, Advocate
for the appellant.

PANKAJ JAIN, J. (Oral)

1. Defendant No.1 is in appeal aggrieved of the judgment and decree passed by the Civil Judge (Junior Division), Yamuna Nagar, which stands affirmed by the Additional District Judge, Yamuna Nagar, vide judgment and decree dated 30.01.2023.
2. Plaintiff filed suit seeking possession of the shop as detailed out in the headnote of the plaint. As per the plaintiff, the shop was constructed in November, 2004. Defendant No. 1 was inducted as a tenant in the shop in question on a monthly rent of Rs.1,500/- per month in December, 2004. Defendant No. 1 proved to be a bad tenant and failed to make payment of rent w.e.f. 01.06.2010 and was in arrears of more than Rs.54,000/- on the date of filing of the suit, i.e. 01.07.2013. Notice under Section 106 of the Transfer of Property Act was served by the plaintiff upon the defendant. Responding thereto, defendant No. 1 claimed that he had handed over possession to the plaintiff in the year 2009, clearing all the dues. It is defendant No.2, who is now tenant in the shop in question.



3. Suit was contested by defendants who filed joint written statement. Defendant No. 1 claimed that he was no more a tenant in the shop having vacated the same in the year 2009. It is defendant No.2, who is tenant under the plaintiff in the shop in question. Defendant No.2 claimed that she was already paying rent to the plaintiff.

4. Suit filed by the plaintiff was put to trial framing following issues:-

- “1. Whether the plaintiff is entitled to the relief of possession by way of ejectment as prayed for?OPP*
- 2. Whether the plaintiff is not maintainable?OPD*
- 3. Whether the plaintiff has no locus standi to file the present suit?OPD*
- 4. Whether the plaintiff has concealed material facts from the court?OPD*
- 5. relief.”*

5. Trial court while answering issue No.1, held that defendant No.1 admitted that he was inducted as tenant in the year 2004, but failed to prove that he handed over the premises back to the plaintiff in the year 2009. No document could be produced on record by defendant No.1 to prove handing over the possession to the plaintiff. Likewise, defendant No.2 failed to prove payment of rent to the plaintiff. While deciding issue No.2, the Court found that the plaintiff proved construction of shop post March 2004. In terms of Section 1(3) of the Haryana Urban (Control of Rent and Eviction) Act 1973, newly constructed building is exempted from the application of the provisions of the 1973 Act for a period of 10 years from the date of completion of construction. The present suit having been instituted on 01.07.2013, i.e. within 10 years of construction, was thus maintainable.



6. The aforesaid findings stand affirmed by the Lower Appellate Court.

7. Counsel appearing for the appellant has assailed the findings recorded by the Courts below. He submits that despite there being a specific stand taken by defendant No.1 of having handed over the physical vacant possession of the shop to the plaintiff in the year 2009, he has been held liable to pay mesne profit.

8. Having heard counsel for the appellant and after carefully going through records of the case, this court finds that plaintiff having approached the Court, claiming decree of possession by way of eviction of defendant No.1, was required to prove tenancy. Defendant No.1 admitted tenancy under plaintiff. He was thus under an obligation to prove surrender of tenancy by handing over physical vacant possession in the year 2009 as claimed in written statement. There is no evidence on record to prove the same except bald assertions.

9. Defendant No.2 also failed to discharge her onus by proving payment of rent to the plaintiff. If that was not enough, joint written statement filed by both the defendants itself proves that both are in cahoots with each other.

8. In view of above, finding no ground to interfere in concurrent finding of fact recorded by the Courts below, the present appeal is ordered to be dismissed.

9. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

25.08.2025

Dinesh

Whether speaking/reasoned :
Whether Reportable :

Yes
No