



ordered by the Rent Controller. The shop was ordered to be evicted. The possession was handed over to the plaintiff in the Court of Rent Controller, Dera Bassi. The plaintiff claimed that defendant having failed to make payment of rent from February 2019 till October, 2019 is liable to pay rent at the rate of Rs.48,400/- for a period of 9 months i.e. Rs.4,35,600/-. Electricity usage to the tune of Rs.11,466/- is also pending against the defendant. Plaintiff also claimed an amount of Rs.50,000/- on account of the expenditure spent on repair of the shop after the defendant damaged the same while vacating.

4 Suit was contested by the defendant. Tenancy was admitted. However, execution of rent agreement claimed by the plaintiff was denied. Defendant claimed that the shop was rented orally on a monthly rent of Rs.25,000/-. Defendant claimed that he paid rent regularly till May 2019. However, plaintiff never issued any receipt. At the inception of tenancy defendant paid an amount of Rs.1,00,000/- as security which is still lying with the plaintiff and has not been adjusted. Defendant further claimed that the possession was handed over to the plaintiff on 16.10.2019 in the Court of Rent Controller, Dera Bassi after plaintiff intentionally opted not to take possession of the premises on 25.09.2019 when defendant vacated the same.

5 On the basis of the pleadings following issues were framed by the Court of the First instance :-

“1. Whether the plaintiff is entitled to recovery of Rs. 4,97,066/- , as prayed for? OPP

2. Whether the suit of the plaintiff is not legally maintainable? OPD



3. Whether the plaintiffs have no locus standi to file the present suit? OPD

4. Relief.”

6 Plaintiff proved rent agreement dated 11.09.2018 Ex.P1 along with other documents. Trial Court found that in terms of rent agreement Ex. P1 the rate of rent is proved to be Rs.48,400/- per month. Apart from oral statement denying execution of the rent agreement defendant failed to lead any evidence to dislodge the rent agreement. Likewise he failed to prove payment of rent from February 2019 till October 2019. Trial Court accordingly decreed the suit filed by the plaintiff partly for a sum of Rs.4,35,600/-.

7 Unsuccessful plaintiff approached Lower Appellate Court. Lower Appellate Court has affirmed the findings recorded by the Court of the First Instance. Counsel for the appellant-defendant has assailed the findings recorded by the Courts below asserting that plaintiff-Amarjit Kaur herself never stepped into witness box. It was only her husband Ujjagar Singh who deposed as her special power of attorney. He thus submits that Ujjagar Singh being not signatory to the rent agreement was not competent to prove the same. The Courts below erred in relying upon the testimony of Ujjagar Singh to decree the suit filed by the plaintiff.

8 I have heard learned counsel for the appellant and have gone through records of the case.

9 The pivotal issue to be decided in the present appeal is :

Whether the plaintiff successfully proved rent agreement Ex.P1 or not?



10 As per the appellant-defendant he never executed rent agreement propounded by the plaintiff. Apart from bald assertion and stand taken in the written statement, no evidence was ever led by the defendant to prove that rent agreement does not bear his signatures. Rent agreement was attested by Sarwan Singh and Jaswinder Singh. Sarwan Singh appeared as PW2. He proved due execution of the rent agreement. Thus plaintiff discharged onus to prove the agreement in terms of Section 68 of the Evidence Act, 1872 (for short 'the 1872 Act'). So far as plea raised by the counsel for the appellant-defendant with respect to appearance of Ujjagar Singh as attorney of his wife Amarjit Kaur-the plaintiff, the Lower Appellate Court has rightly referred to Section 120 of the 1872 Act to hold that Ujjagar Singh being husband of Amarjit Kaur was a competent witness. The issue of the close relations like husband, son etc. appearing and deposing as attorney has been elaborately explained by Supreme Court in the case of ***Man Kaur Vs. Hartar Singh Sangha (SC) 2010 (10) SCC 512*** observing as under :-

“12. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of



such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

*(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. **Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively***



managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.”

11 In view of above stated proposition of law, this Court finds that plaintiff not only proved rent agreement Ex.P1 in accordance with law, Ujjagar Singh was a competent witness to depose acting as attorney of his wife Amarjit Kaur.

12 Pure finding of fact has been recorded by the Courts below.

13 Finding no merits in the present appeal, the same is ordered to be dismissed.

14 Pending miscellaneous application, if any, also stands disposed off.

28.03.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No