

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****139****RSA-3094-2025 (O&M)****Date of decision: 08.09.2025****Sant Bahadur****...Appellant(s)****Vs.****Smt. Archana Verma****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Rishabh Jain, Advocate for the appellant.

NIDHI GUPTA, J.

Present second appeal has ben filed by the defendant against the concurrent judgments and decrees of the learned Courts below; whereby the suit for mandatory injunction filed by the plaintiff-respondent, has been decreed by both the Courts below.

2. Brief facts of the case are that the plaintiff had filed a suit seeking decree for mandatory injunction directing defendant to hand over the vacant and physical possession of 2 rooms/verandah and kitchen in House No. 236, Sector-9, Panchkula (hereinafter "the suit property"), to the plaintiff; **and** to pay mesne profit @ Rs.10,000/- p.m. from 05.04.2017 till the date of handing over the vacant possession of the said house to the plaintiff. It was pleaded that father of the plaintiff namely Sh. RC Tandon being owner of the property, had allowed the defendant to reside in the suit property as he was his servant. After the death of her father, plaintiff had got the property transferred in her name. Plaintiff had requested the



defendant to vacate the suit property after 3 months of death of her father. However, the defendant had illegally occupied the suit premises and instead of vacating the suit property, had started abusing and misbehaving with the plaintiff. Plaintiff had also made a complaint on 09.07.2017 to DCP, Panchkula. However, the defendant had moved a counter claim to DGP, Haryana; and also filed a suit for permanent injunction against the plaintiff which was rejected vide judgment and decree dated 08.09.2017. It was pleaded by the plaintiff that accordingly, defendant is liable to make payment of Rs.10,000/- p.m. as mesne profits from the date of death of her father i.e. 05.04.2017. Hence, the present Suit was filed on 06.07.2019.

3. To the contrary, it was the case of the defendant that he was in occupation of the suit premises as a tenant on the basis of an oral rent agreement entered into between the defendant and RC Tandon.

4. Vide judgment and decree dated 25.09.2024, the learned Civil Judge (Senior Division), Panchkula had decreed the suit of the plaintiff with costs with the following directions: -

“In view of my above discussion on the aforesaid issues, the suit of the plaintiff succeeds and same is hereby decreed with costs. The defendant is directed to hand over the vacant and physical possession of two rooms/verandah and kitchen in H.No. 236, Sector-9, Panchkula within two months from today. Defendant is also directed to pay mesne profits @ 10,000/- per month to the plaintiff from the date of death of her father i.e. from 05.04.2017 till the date of handing over the possession of the suit property. Decree-



sheet be drawn accordingly. File be consigned to the record room, after due compliance.”

5. The appeal filed by the defendant was dismissed with costs by learned District Judge, Panchkula vide judgment and decree dated 12.08.2025. Hence, the present second appeal by the defendant.

6. It is *inter alia* submitted by learned counsel for the appellant/defendant that the learned Courts below committed grave error in passing the impugned judgments as they misappreciated the evidence led by the appellant, who had examined sufficient credible witnesses. Despite the overwhelming evidence establishing tenancy, the Courts had mechanically relied on earlier litigation without independently assessing the evidence brought on record in the present suit. It is submitted that the defendant had been in continuous peaceful possession of the suit property since the past 33 years as tenant. It is contended that such long possession creates strong presumption that possession is lawful unless proved otherwise. It is argued that the burden was upon the plaintiff to prove that appellant's possession was unauthorized, which she failed to discharge.

7. It is submitted by learned counsel for the appellant that the Courts below completely ignored well-established principle that oral tenancy is valid under law when proved through credible evidence. Appellant established through reliable testimony that he was inducted as tenant at Rs. 500/- rent through D.K. Gupta, with rent deducted from his wife's salary. Multiple witnesses corroborated this arrangement known to



neighbours and locality. Mere absence of written agreement cannot invalidate oral tenancy proved through consistent testimonial evidence. Courts contrary finding is legally erroneous.

8. Learned counsel for the appellant further submits that the learned Courts below committed grave error in awarding mesne profits @ Rs.10,000/- monthly without any evidence supporting such quantification. No witness was examined by respondent-plaintiff to establish rental value. No expert evidence, comparable instances, or valuation reports were produced. Trial Court's finding in para 19 that "*evidence shows rent is Rs. 10,000/-*" is baseless conjecture as no such evidence exists on record. Appellate Court blindly endorsed this without independent examination, amounting to abdication of judicial function. It is further submitted that the plaintiff herself, appearing as PW-2, has categorically admitted in her examination-in-chief that the appellant was in possession of only '*a kutcha servant room and a kitchen and had made a tin shed in the verandah*'. This admission by the plaintiff is conclusive proof that the appellant was never in possession of the entire suit property measuring 350 sq. yards, but only a minuscule portion comprising one kutcha room, kitchen and tin shed in verandah. It is contended that the learned Courts below have completely ignored this crucial admission while awarding mesne profits, which amounts to grave error in appreciation of evidence.

9. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Id. Courts below be set aside.



10. No other argument is raised on behalf of the appellant/defendant. I have heard Id. counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the defendant.

11. The plaintiff had placed on record the plaint of the Civil Suit no.485 of 2017 filed by the defendant against the plaintiff for permanent injunction; which was dismissed vide judgment dated 30.05.2019 (Ex.P14). The defendant in his cross-examination as DW4 has admitted that this previous suit filed by him against the plaintiff for permanent injunction was dismissed. Defendant has also admitted that he was working as a Chowkidar while his wife was working as a maid in the house of the plaintiff. Defendant has further admitted that he does not have any writing regarding his tenancy to prove the case as set up by him.

12. On the other hand, plaintiff had proved her case by leading evidence that she is a sole legal heir of her father, and house in question had been re-allotted to her. As such, defendant is occupying the property in question without consent of the plaintiff and is, therefore, liable to pay mesne profits @ 10,000/-p.m. The defendant is claiming himself to be the tenant on the part of the suit property on the basis of the alleged oral tenancy. It was his case that rent of Rs.500/-p.m. is being deducted from the salary of his wife. However, wife of the defendant has not stepped into the witness box. Even no evidence has been led by the defendant to prove that he had ever paid rent. As such, defendant had miserably failed to prove that he was in possession of suit property as tenant. It was clear from the evidence on record that defendant was in unauthorized occupation of the



suit property. Even in the complaint (Ex.PA/A) filed by the defendant to the DGP, Haryana, he has admitted his signature over the complaint and it is mentioned that he and his wife were serving the father of the plaintiff, R.C.Tandon in capacity of servants/care takers. He has nowhere mentioned that he was residing in the suit property as a tenant.

13. Lastly, before parting, it may be pointed out that after passing of the judgment and decree by the learned Trial Court, respondent/plaintiff had filed Execution Petition bearing No. EXE-105-2024 in which the learned first Appellate Court vide order dated 07.02.2025 had directed the Executing Court to keep warrants possession in abeyance thereby protecting the defendant's right during the pendency of the appeal. It is however, admitted by learned counsel for the appellant/defendant that after the dismissal of the first appeal vide judgment dated 12.08.2025, the learned Executing Court vide order dated 22.08.2025 had directed that warrants of possession be issued for 08.09.2025 which was executed and physical possession of the suit property has been taken from the appellant/defendant.

14. At this stage, it has been prayed by learned counsel for the appellant that mesne profits be assessed at a reasonable rate as defendant is a poor person. It is also submitted that no process of law has been followed in ascertaining the mesne profits @ Rs.10,000/-p.m. I find no merit in the said submission as, first and foremost, the defendant has been in illegal and unauthorized occupation of the suit property since 05.04.2017. Moreover, the suit property is situated in prime area of tricity



of Chandigarh i.e. House No. 236, Sector-9, Panchkula; and the defendant has been occupying the same without the consent of the plaintiff. On a broad estimation, rent/mesne profits of 2 rooms with kitchen in the said area/vicinity would be around Rs.20,000-Rs.25,000/-p.m.

15. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

16. Pending applications, if any, stand disposed of.

08.09.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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