

(1999) 12 P&H CK 0031

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 1013 of 1996

Amrit Lal Sharma

APPELLANT

Vs

Narinder Sharotri

RESPONDENT

Date of Decision: Dec. 16, 1999**Acts Referred:**

- Evidence Act, 1872 - Section 114
- General Clauses Act, 1897 - Section 27
- Transfer of Property Act, 1882 - Section 106

Citation: (2000) 2 CivCC 30 : (2000) 124 PLR 806**Hon'ble Judges:** V.K. Jhanji, J**Bench:** Single Bench**Advocate:** Hemant Kumar, for the Appellant; Arun Jain, for the Respondent

Judgement

V.K. Jhanji, J.

This is defendant's (tenant) second appeal directed against the judgment and decree of the Courts below whereby suit of the plaintiff (Landlord) (respondent herein) for his ejection and for recovery of rent, has been decreed.

2. In brief, the facts are that landlord let out the premises in dispute to the defendant on a rent of Rs. 850/- per month. Tenancy was oral and from month to month basis. It is the case of the landlord that tenant paid the rent from November, 1990 to March, 1991 but stopped paying it thereafter and as such, he was in arrears of rent since 1.3.1991. According to the landlord, defendant did not prove to be a good tenant and, therefore, he called upon him to vacate the premises and pay the arrears of rent but to no effect. Landlord issued notice dated 4.5.1992 to the defendant terminating his tenancy as required u/s 106 of the Transfer of Property Act. Notice was sent through registered A.D. post and U.P.C. beside pasting it on the outer door of the premises in dispute. Tenant did not vacate the premises in spite of termination of tenancy nor did he pay the arrears of rent. Hence, the suit. Upon

notice of the suit, tenant admitted the relationship of landlord and tenant but contended that he had been paying rent and that landlord had not been issuing receipts in token thereof. The receipt and validity of notice was denied. Landlord filed replication controverting the allegations made in the written statement. On the pleadings of the parties, the following issues were framed by the trial Court:-

1. Whether a valid notice terminating the tenancy of the defendant was served upon the defendant? OPP
2. Whether the plaintiff is entitled for the ejectment of the defendant? OPP
3. Whether the plaintiff is entitled to recover a sum of Rs. 12,500/- as arrears of rent? OPP
4. Relief.

3. On the basis of the evidence adduced by the parties to the record, trial Court held that a valid notice had been sent to the defendant-tenant which was received by him. It held that after termination of his tenancy, defendant-tenant had no legal right to retain possession and thus, decreed the suit for ejectment of the defendant. On finding that defendant was in arrears of rent, suit was also decreed in regard to recovery of arrears of rent. In appeal by the defendant, first appellate Court affirmed the finding of the trial Court. Hence, this second appeal by the defendant.

4. The only contention urged by learned counsel appearing on behalf of defendant is that notice u/s 106 of the Transfer of Property Act had not been served on the defendant and in this regard, defendant wanted to lead additional evidence so as to call for the record of the Post Office to prove that the registered letter sent to him was returned undelivered but the trial Court as also the first appellate Court erroneously rejected his prayer to lead additional evidence. It is contended that in absence of service of notice, suit is liable to be dismissed. In answer to these submissions, learned counsel appearing on- behalf of landlord has contended that both the Courts below have appreciated the evidence in regard to service of notice and correctly drawn presumption regarding service of notice and in second appeal, the said finding of fact should not be interfered with.

5. After hearing the learned counsel and going through the record, I do not find any merit in this appeal. u/s 106 of the Transfer of Property Act, there are two modes in which notice terminating the tenancy can be served first one is that of sending it to the party by post and the second mode is by; (a) tendering or delivering personally to such party or to one of his family members or servants, at his residence; or (b), if such tender or delivery is not possible, affixing it to a conspicuous part of the property. In other words, according to the plain language of this section, it may be sent by post to the party or may be tendered or delivered personally in the manner indicated in the section. In this case, landlord not only sent notice by registered A.D. post but also by U.P.C. and a notice was also pasted at the conspicuous part of the

property. In order to prove that notice was sent by registered post, postal receipt, Ex. P-1A, has been proved. Landlord has also proved U.P.C. Ex.P-2. He has further proved photographs, Ex.P-3 to P-8, and negatives, Ex.P-91 to P-9/6, to prove that a copy of the notice was pasted on the outer wall near the gate of the premises in dispute and photographs were taken at the time of pasting of the notice. In rebuttal, there is only a statement of the defendant that he had not received the notice. It is now well settled that sending by post, means sending by post to the tenant's proper address. Where a notice has to be served through post, all that a landlord can do to comply with the provisions is to post the pre-paid registered letter containing tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. In that event, u/s 27 of the General Clauses Act, the letter shall be presumed to have been delivered to the addressee. There is no obligation upon the landlord to prove the service of notice upon the tenant if he sends the notice by registered post, properly addressed. It is also incorrect to say that because the postman had not been called to prove the service, notice was not sent. As already noticed, not only the notice was posted by registered post, but it was posted under certificate of posting also. A notice to quit sent by ordinary post is as valid as one sent under the registered post. Section 106 of the Transfer of Property Act does not provide that notice of termination of tenancy should be sent by registered post. Where such a notice is sent under certificate of posting, a presumption arises u/s 114 of the Indian Evidence Act that there has been due service of notice.

6. As regards the contention that defendant was not given an opportunity to produce evidence to call for the record of the post-office to prove that notice sent by registered post was returned undelivered, it is only to be stated that the defendant was given as many as six opportunities, i.e. on 2.3.1993, 2.4.1993, 16.4.1993, 20.4.1993, 10.5.1993 and 8.6.1993 to bring his evidence but he did not conclude his evidence despite the various dates given to him for this purpose. Trial Court vide order dated 14.12.1993 closed evidence of the defendant. Against this order, defendant came to this Court and his revision petition was accepted and he was afforded one opportunity to conclude his evidence on payment of Rs. 500/- as costs, but he neither paid the costs nor examined any witness. In such circumstances, the Courts below have rightly observed that the defendant was more interested in prolonging the proceedings than actually concluding his evidence.

7. At this stage, learned counsel appearing on behalf of defendant has contended that defendant be given time upto 31.1.2000 to vacate the premises. Learned counsel appearing on behalf of landlord states that the landlord has no objection if time is given to the defendant to vacate the premises provided he is asked to pay the arrears of rent w.e.f. 1.5.1997. The request of the counsel is just and reasonable. Accordingly, the appeal being without any merit shall stand dismissed and the defendant (appellant herein) is allowed to vacate the premises on or before 31.1.2000 provided he deposits with the executing Court the arrears of rent at the

rate of Rs. 850/- per month w.e.f. 1.5.1997 till 31.1.2000, within fifteen days from today, alongwith an undertaking in writing that he shall hand over the vacant possession of the premises in dispute to the landlord on the expiry of the period indicated above. In case the defendant fails to deposit the arrears of rent or file the undertaking, the landlord shall be at liberty to seek his ejectment through execution and in that eventuality, trial Court along with the warrants of possession, shall provide police help. There shall be no order as to costs.