

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-440-2015 (O&M)

Date of decision: 21.1.2015

Sham Lal

..... Petitioner

Versus

Jagjit Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Binderjit Singh, Advocate for the petitioner.

R.P. NAGRATH, J. (ORAL)

Notice motion.

Mr. JK Singla, Advocate who is present in Court accepts notice on behalf of defendant-caveator/respondent.

The petitioner has invoked revisional jurisdiction of this Court under Article 227 of the Constitution of India, seeking to set aside the order dated 13.1.2015 (Annexure P-5) passed by the learned Civil Judge (Junior Division), Phul whereby application dated 7.1.2015 (Annexure P-3) filed by the defendant-respondent under Order VI Rule 17 of the Code of Civil Procedure (CPC) was allowed.

I have heard learned counsel for the parties and perused the impugned orders and the paper book.

The suit for ejectment was filed by the plaintiff-petitioner in March, 2011 when the property in question was falling outside the municipal limits and, therefore, eviction was claimed under the provisions of Transfer of Property Act, 1882. During pendency of suit, the notifications dated 18.9.2013 and 31.10.2014 were issued by State Government constituting Nagar Panchayat for the area and, therefore, according to defendant-respondent, the provisions of the East Punjab Urban Rent Restriction Act, 1949, would apply for seeking eviction. However, the learned petitioner's counsel vehemently contended that rights of the parties are to be determined on the basis of facts and legal propositions existing on the date of filing the suit i.e. in the year 2011 and not on the subsequent extension of the Municipal Limits.

Vide impugned order dated 13.1.2015 (Annexure P-5), the learned trial Court has allowed the amendment to incorporate the plea of jurisdiction of the Civil Court to entertain and try the suit because of promulgation of the notifications dated 18.9.2013 and 31.10.2014 being subsequent events. The aforesaid amendment by which the defendant-respondent have incorporated subsequent events, has been rightly allowed by the trial Court, but the question that rights of the parties have to be determined on the basis of prevailing facts on the date of institution of the suit or are affected by subsequent notification would always be open for the trial Court to determine on merits.

The learned counsel for the petitioner is quite justified in his submission that the trial Court erred in observing that issue on the question of jurisdiction was already framed. In fact issue No. 5 already

framed was whether the suit of the plaintiff is not properly valued for the purposes of court fee and jurisdiction and not on the ground that Civil Court cannot entertain the suit on the ground that now the property falls within the limits of municipal town. Therefore, the learned trial Court would have to frame a specific issue on this controversy after completing the amended pleadings.

Learned counsel for the defendant-respondent states that respondent has already led evidence to prove the notifications and would not lead any further evidence after the amendment has been allowed. The plaintiff-petitioner of course will have such an opportunity, if so required.

With the aforesaid observations, the instant petition stands disposed of.

January 21, 2015
rishu

(R.P. NAGRATH)
JUDGE