

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

RSA No.2970 of 2011 (O&M)

Date of decision : 10.08.2015

Jakir Hussain and another

...Appellants

Versus

Anita Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. L.N. Verma, Advocate for the appellants.

Mr. Mohan Jain, Sr. Advocate &
Mr. Vikram Jain, Advocate &
Mr. Fateh Saini, Advocate &
Mr. Arastu Chopra, Advocate for respondent Nos.1 to 3.

AMIT RAWAL, J. (Oral)

The question which has been raised in this Court is whether the Civil Court would have jurisdiction to grant declaration, in respect of suit filed, on the basis of holding of occupancy rights after commencement of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952.

Mr. L.N. Verma, learned counsel appearing on behalf of appellants/plaintiffs submits that Lower Appellate Court had lost sight of the fact that it enjoined upon obligation under Section 96 to decide the appeal on all the points and have not after framing all points of

determination has committed illegality and perversity in dismissing the appeal holding therein that Civil Court has no jurisdiction. In this respect, he has relied upon Full Bench of this Court in *Shiv Charan Vs. The Financial Commissioner, Revenue Department, Haryana, (2004-3) CXXXVIII PLR 569*. He further submits that in view of ratio descendi culled out by the Full Bench, the matter is required to be remanded back to the Lower Appellate Court.

Mr. Mohan Jain, Sr. Advocate assisted by Mr. Fateh Saini, Advocate for respondent Nos.1 to 3 submits that it is true that in view of judgment rendered by the Full Bench reiterated by this Court in *Soni Vs. Kanchan and ors. 2012 (5) R.C.R. (Civil) 528*, it has been held that this Court after taking into consideration the aforementioned legal proposition remanded back the matter to the First Appellate Court for deciding the appeal on merits afresh.

I have heard learned counsel for the parties and appraised the paper book.

There is no dispute to the aforementioned proposition of the law that owing to the enactment of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, the jurisdiction to decide the dispute as envisaged under Section 77 (3)(d) of the Act would be of Civil Court and not of the Revenue Court.

Accordingly, impugned judgment and decree dated 11.02.2011 passed by the Lower Appellate Court is hereby set aside and the matter is remanded back to the First Appellate Court with the direction to decide the matter afresh on merits without taking into consideration whether the Civil

Court has jurisdiction or not. In essence, it is made clear that objections vis-a-vis the jurisdiction of the Civil Court would not be taken by the defendants and the matter would be decided afresh on merits.

Accordingly, present Regular Second appeal is allowed on the following substantial question of law:-

1) Whether the jurisdiction to grant a declaration that the tenant has acquired occupancy rights and has consequently become owner of the land, lies only with the civil courts and not with the Revenue Courts?

Parties as well as their counsels are directed to appear before First Appellate Court on 03.09.2015.

Record of the Trial Court be also sent back.

10.08.2015

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**(AMIT RAWAL)
JUDGE**