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

LPA No.1356 & 1406 of 2014(O&M)

Date of Decision: 15.01.2015.

Balwinder Singh and others

.....Appellants

Vs.

Financial Commissioner (Appeals-I), Punjab and others

.....Respondents

**CORAM:HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. R.S. Chauhan, Advocate
for the appellants.

1. *Whether Reporters of 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?*

RAJ MOHAN SINGH, J.

This order shall dispose of Letters Patent Appeals No.1356 of 2014 & 1406 of 2014 as similar facts are involved in both the appeals. The facts are being taken from LPA No.1356 of 2014.

[2]. The appellants assail the order dated 15.05.2014 passed by learned Single Judge, declining to interfere in the writ petition. The predecessor-in-interest of private respondents No.5 to 11 namely, Harbans Singh was recorded as a tenant in respect of 81 Kanal 4 Marla of land. His sons namely Wazir Singh and Jagat Singh filed a suit for recovery of 1/3rd share amounting to ₹42,484/- under Section 77(3)(n) of the Punjab Tenancy Act, 1887 for the crop Sauni-1994 to Hari-1997 pertaining to land measuring 22 Kanal 17

Marla situated in the revenue estate of village Rajjiwala, District Ferozepur.

[3]. The said suit was dismissed by the Assistant Collector, Ist Grade, Ferozepur, vide order dated 04.02.2000 under Order 17 Rule 3 CPC as the plaintiffs therein did not produce any evidence despite many opportunities granted to them. The suit was dismissed for want of evidence. According to revenue record viz. *jamabandi* for the year 1993-94, the land was recorded in the name of Sadavarat Panchayati Area, Ferozepur City as owner and Harbans Singh as *Gair Marusi Awal* and Kundan Singh S/o Dyal Singh as *Gair Marusi Doem*. The predecessor-in-interest of the private respondents filed yet another suit for recovery in respect of 27 Kanal 10 Marla of land for the period *Kharif* 2001 to *Rabi* 2004 in the Court of Assistant Collector, Ist Grade Ferozepur in the year 2004.

[5]. In a civil litigation that started between Jagat Singh and Wazir Singh (predecessors-in-interests of private respondents) on one hand and Dhian Singh (predecessor-in-interest of appellants) on the other hand, the trial Court vide judgment and decree dated 08.05.1996 held Dhian Singh (plaintiff of suit for permanent injunction) to be in possession as tenant under Jagat Singh and Wazir Singh (Defendants in the suit). The suit was filed by the predecessor-in-interest of present appellants for permanent injunction and the Court restrained the private respondents (defendants in suit) from interfering in their possession except in due course of law. The Trust filed appeal against the said judgment and

the Appellate Court vide judgment and decree dated 20.05.1999 accepted the appeal qua the Trust holding the appellants (LRs of Dhian Singh) to be in possession and since there was no threat on the part of the Trust, therefore appeal qua the President of the Turst Sadavarat Panchayati Area was accepted.

[6]. After the death of Harbans Singh-*Gair Marusi Awal*, the appellants tried to deposit the rent directly with the owner under Section 14(A)(iii) of Punjab Security of Land Tenure Act, 1953. In those proceedings, status of the appellants was held to be that of tenant under the private respondents. The Assistant Collector, Ist Grade vide order dated 23.12.2003 directed the appellants to deposit the share of produce for payment to the private respondents within two months. The appellants did not comply with the said order.

[7]. The Assistant Collector, Ist Grade vide order dated 31.05.2006 dismissed the suit and it was also held that the appellants/defendants will pay share of produce directly to the original owners.

[8]. The said order was challenged before the Additional Deputy Commissioner, Ferozepur by the private respondents, who vide order dated 20.12.2006 remanded the case to Assistant Collector, Ist Grade for deciding the case afresh. The debated issue before the Authority was in context of definition of 'landlord' for which reliance was placed upon Section 4(5) & (6) of the Punjab Tenancy Act to highlight that for a person to be landlord, it is not necessary that he

should be owner of the property. The Additional Deputy Commissioner remanded the case without going into the merits and demerits of the case for fresh decision after giving adequate opportunities to both the parties to plead their respective claims. However, the said order of remand was unsuccessfully challenged by the appellants before the Commissioner, Ferozepur Division, Ferozepur, who vide order dated 10.06.2008 dismissed the appeal. The said order was further assailed before the Financial Commissioner (Appeals-I) Punjab, under revisional jurisdiction. The Financial Commissioner also dismissed the revision petition vide order dated 09.02.2012 by holding that the Assistant Collector, Ist Grade already held the appellants to be tenant under the private respondents in the suit and the earlier suit for recovery for the period *Kharif* 1994 to *Rabi* 1997 was dismissed by the Assistant Collector, Ist Grade for want of evidence and the same does not operate as *res judicata*/estoppel in any way because the present suit is based on entirely a new cause of action. The question was only to determine capacity in which appellants held the land?

The mitigating circumstances of the case were such in which remand order was held to be legal as both the parties were given free hand to prove their respective claims without being influenced by any of the past proceedings.

[9]. The appellants felt dissatisfied with the orders passed by the Authorities in hierarchy and ventured to file CWP No.11266 of 2012 which was dismissed by the learned Single Judge vide order

dated 15.05.2014.

[10]. Apparent facts on record revolve around the status of possessory title of the appellants who were defendants in the suit and whether dismissal of earlier recovery suit under Order 17 Rule 3 CPC (want of evidence) creates *res judicata* or estoppel for initiation of fresh recovery proceedings for a new period of crop?

The Assistant Collector, 1st Grade has been asked to answer the aforesaid questions by allowing both the parties to adduce evidence by remand order of Additional Deputy Commissioner which has been subsequently upheld by Authorities in appeal, revision and even by the learned Single Judge. Such a course adopted by the Appellate and Revisional Authorities cannot be faulted with. There cannot be any jurisdictional error in adopting such a course keeping in view the present set of facts involved in the litigation.

[11]. Finding no illegality, irregularity or jurisdictional error in the orders passed by the Authorities under the Act and in the impugned orders, these appeals being bereft of merits, are dismissed as such.

(SURYA KANT)
JUDGE

(RAJ MOHAN SINGH)
JUDGE

Janaury 15, 2015

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