

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4861 of 2012 (O&M)

Date of Decision.03.09.2015

Bal Krishan Sharma and others

.....Appellants

Versus

Gurpal Singh and another

.....Respondents

Present: Mr. Amit Rana, Advocate for
Mr. Puneet Gupta, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. Delay of 115 days in refiling the appeal is condoned.
2. The suit for recovery of lease filed by the landlord came to be dismissed on a plea by the 1st defendant that he had surrendered possession of the property on 29.08.2000 and an agreement was also written on the same day. He had waived the right to collect any rent in respect of the property. It was further contention of the tenant that the suit itself was not competent and it could have been filed only before the revenue authorities.
3. The plaintiffs sought to explain that the property had been delivered possession even admittedly by the defendant in the year 2000 and the suit was being filed only on 5.2.2002 and although the claim had been made for lease from Kharif 1997, he had restricted the claim only to ₹ 85,000/- for the *batai* payable for Rabi 1997 and Rabi 2000 to conform the claim to be within the law of limitation i.e. within a period

of three years prior to the institution of the suit in the year 2002.

4. The Court found that if one of the plaintiffs had himself filed a suit for declaration that the agreement was brought about by fraud and coercion and later that suit was withdrawn, the agreement could not itself be impeached and if the plaintiff was giving up any claim against the defendant, it was most unnatural that existing liability would have been given up at that time without making provision for the same. The Court further held that any claim for recovery of rent could be made only before the revenue authorities and civil suit itself was not competent.

5. The Appellate Court affirmed the finding and also held that the plaintiff had himself filed a suit in respect of the very same property in the year 2001 and if there was an existing liability of rent, he would have also enforced such a claim in that suit itself. The very fact that in relation to the very same property, a suit had been filed but the plaintiff had not asked for the relief of recovery of *batai* would bar him by the provisions under Order 2 Rule 2 CPC. The Court also found that the suit was barred by limitation.

6. I will not take the plea of Order 2 Rule 2 CPC as applicable in a situation where the claim in the earlier suit was not for recovery of possession. If only there was a recovery of possession of immovable property and there was an existing liability for damages of rent, it ought to have been made the subject matter at that time itself. There is no such compulsion in suit for injunction. However, suit for injunction did contain a prayer for rent was surely a circumstance that the Court could have taken note of to consider whether there was an existing liability or

not. If the plaintiffs' contention was that the property had been delivered possession in the year 2000 as admittedly it was, it was inconceivable that the plaintiff would have let go an opportunity to sue for recovery of the *batai* which was still due and payable. In fact by the later institution of the suit in the year 2002, the plaintiff had to voluntarily give up a portion of the claim by way of limitation and restrict the claim only for the period Rabi 1999 and 2000. The contention in defence that at the time when the agreement was made with the defendant, the plaintiff had also give up his claim with reference to the lease was, therefore, considered by the two Courts below in that context that unless it was true, the plaintiff could have made a claim with reference to the *batai* even at that time when he instituted the suit for injunction. If there were two views possible from a given set of circumstances and the two Courts below have taken a view that the plaintiff was instituting the suit for injunction without a prayer for *batai* only because he had given up the plea, I would go with the inference drawn by the Courts below as reasonable and proper and in the second appeal, I will not reappraise such a matter of inference which was surely possible.

7. To an issue of how the civil suit came to be filed without resort to action before the revenue authorities, the learned counsel would state what is also stated in the plaint that since the tenant had given up possession of the property, the Civil Court was not any longer barred from entertaining such a suit and the revenue authorities could not have entertained the action. I have looked into the provisions of the Punjab Tenancy Act 1887 and arrears of rent as defined under Section 4

(4) of Tenancy Act means any rent which remains unpaid from the date of which it became due. The tenant's definition also makes a person who holds the property and the exceptions granted as not qualified as tenant are only persons brought out in four categories: (a) an interior landlord; (b) mortgagee of the rights of the land owner; (c) a person to whom the holding had been transferred are let in farm from the Punjab Land Revenue Act, 1887 or (d) a person who takes a land from the Government on lease of unoccupied land for the purpose of subletting it. The tenant who holds possession of property or whose period of tenancy has expired does not stand excluded by this definition. Section 77 of the Act refers to the Revenue Court's jurisdiction and the suits which would be cognizable by it. A claim by a landlord for sums on account of lease by which a tenancy is held is referred to in the second group of classes of action which would be possible before the Revenue Authority. A suit for arrears of rent is contemplated in the third group in Clause (n). The suit ought to have been, therefore, instituted only before the Revenue Court. There is also provision under Section 77 that sets out a procedure where revenue matter is raised before the Civil Court, it allows for Civil Court to transfer the matter to Revenue Court for consideration. In this case, the plaintiff could have sought for a reference to the Revenue Court at the time when objection regarding jurisdiction was taken but chose not to do so. The same argument was pressed forth before the Appellate Court also and failed. In the High Court I thought for a while whether such an option could be allowed to be exercised by the landlord. But if this adjudication must be sought before the Revenue Court after the Civil Court's adjudication that the

plaintiff had actually forfeited his right to claim rent at the time when he took possession of the property then it would amount to reopening an issue of what the plaintiffs had voluntarily allowed for to be decided by the Civil Court. It would amount to reopening issues which had become concluded and I do not think it will be efficacious to refer the matter to the Revenue Court at this length of time.

8. I cannot find any help that is possible for the plaintiff in his action for recovery of money and dismiss the second appeal as involving no substantial question of law for consideration in the second appeal.

(K. KANNAN)
JUDGE

September 03, 2015
Pankaj*