

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

C.R. No.1168 of 2016

Date of Decision.17.03.2016

Kehar Singh and another

.....Petitioners

Vs.

Ajit Parshad Jain and others

.....Respondents

Present: Mr. Deepak Vashishth, Advocate
for the petitioners.

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. In a suit for recovery of possession of the property, the contention by the defendant is that his status as tenant is entered in the revenue records. A plea in defence that he is tenant ought not to be taken as concluding the issue, for the plaintiff will succeed or fail by what he asserts. If the plaintiff's contention is that the defendant is not a tenant and he will be entitled to establish that he is not a tenant, he will be entitled to take an action before the Civil Court and secure the relief. On the other hand, if the entry will obtain precedence and the defendant is able to show that the entry is correct then the suit will be found to be incompetent and the Court will decide the incompetency at the time when it delivers the judgment. It cannot be decided at this stage and application for rejecting the plaint is correctly decided.

2. The counsel refers to me Section 39 Punjab Tenancy Act to state that the suit is barred. Where the plaintiff accepts that the

defendant is occupancy tenant and the defendant applies for rejection of the plaint, the bar will operate. In a case where the plaintiff is not prepared to accept that the defendant is occupancy tenant and the defendant is suing for rejection of the plaint, the question of applicability of Section 39 does not arise.

3. The counsel asks for issue regarding jurisdiction as preliminary issue. I reject this contention, for the suit is competent in the manner in which the plaintiff has filed the case and case must secure an adjudication on what is contended by the defendant.

4. There is no scope for interference in the civil revision. The revision petition is dismissed.

(K. KANNAN)
JUDGE

March 17, 2016
Pankaj*