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

Civil Revision No. 555 of 2004

Date of decision : 11.04.2016

Arya Pritinidhi Sabha and another

..... Petitioners

versus

Jarnail Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. O.P.Gupta , Advocate for the petitioners.

Mr.Atul Jain, Advocate for the respondents.

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?

AJAY TEWARI, J. (Oral)

This petition has been filed against the concurrent orders of the Courts below dismissing the petition for eviction filed by the petitioner.

The case of the petitioner was that the respondent was a tenant under it and had sought eviction on the following grounds:-

- i) Respondent being in arrears of rent w.e.f. 1.5.1979 till date
- ii) Respondent having materially altered the premises under his occupancy
- iii) Having sublet some portion of the disputed property

The plea of respondent on the other hand was that the petitioner was neither the owner nor the landlord. In this regard the petitioner relied upon the decision of a previous suit wherein it had sought permanent injunction restraining the respondent from changing the nature of the building. The Courts below held that that finding of the civil court was not only not binding but beyond the jurisdiction of the civil court and consequently held that the petitioner was not the landlord of the respondent. On the issue of non-payment of rent also the Courts below held that the petitioner was not able to prove as to from what date the premises had been let out on rent because there was no rent note on the record. Further since there was no receipt or any proof of any kind it was held that even the period for which there was allegation regarding non-payment could not be proved. As regards the change in construction and the sub letting both the courts held that the petitioner had not been able to prove what was the construction in place when the premises were allegedly let out to the respondent and, therefore, held that it could not be proved as to whether any unauthorised construction had been made or any subletting had been done.

Learned counsel for the petitioner has argued that the finding regarding the relationship is completely vitiated. As per him the reliance placed on *Sawan Ram vs Gobind Ram and anr.* reported as 1980(1) RCR 21, *Ambala Syndicate(P) Ltd. v. M/s Indra Motors Kurali* reported as 1968 Punjab Law Reporter 960 and and *Muni Lal v. Chandu Lal* reported as 1968 Punjab Law Reporter 473 is misplaced.

In Sawan Ram's case(supra) the issue before the Full Bench was whether a civil suit for eviction could be filed in respect of a property to which the Rent Act is applicable. It was argued on behalf of the landlord that the decree could be passed even though it may not be executable and the Hon'ble Full Bench held that no such decree could be passed. Likewise in the case of Ambala Syndicate(P) Ltd. (supra) a Division Bench held that if the Rent Controller decided any issue regarding the eviction of a tenant it cannot be called in question in the Civil Court. Likewise in the case of Muni Lal v. Chandu Lal(supra) also it was held that a Civil Court cannot reopen a matter which has already been decided by the Rent Controller. The basis of these judgments is the principle enshrined in Section 11 of the Code of Civil Procedure as per which any finding given by a Court which does not have the jurisdiction can never be binding. However, the issue in the present case is whether the Civil Court had the jurisdiction to decide the previous case. This has been precisely held by the Hon'ble Supreme Court in **Gram Panchayat of village Naulakha v. Ujagar Singh** reported as 2000(4) RCR(Civil) 749. The relevant portion is as under:-

“10. We may also add one other important reason which frequently arises under section 11 CPC. The earlier suit by the respondent against the Panchayat was only a suit for injunction and not one on title. No question of title was gone into nor decided. The said decision cannot, therefore, be binding on the question of title. See in this connection Sajjadanashin Sayed. Musa Dadabhai Ummer, [2000] 3 SCC 350, where this Court, on a detailed consideration of law in India and elsewhere held that even if, in an earlier suit for injunction, there is an incidental finding on title, the same will not be binding in a latter suit or proceedings

where title is directly in question, unless it is established that it was 'necessary' in the earlier suit to decide the question of title for granting or refusing injunction and that the relief for injunction was founded or based on the finding of title. Even the mere framing of an issue on title may not be sufficient as pointed out in that case."

In this context the judgment of the previous suit has been annexed as Ex.P-2. In that case the petitioner had sought an injunction against the present respondent claiming that it was the owner-landlord and the present-respondent was the tenant and complaining of unauthorized construction being made by the present respondent while seeking the relief prayed that he be restrained from making such construction. The case of the respondent was that the petitioner was neither the owner nor the landlord. The Civil Court held that the petitioner had proved itself to be the owner and consequently granted injunction. A perusal of the above salient facts revealed that the suit as such could only have been laid before a Civil court and no Rent Controller could have the jurisdiction to issue an injunction against a tenant. Before a Rent Controller the only relief for the landlord would have been to wait for the unauthorised construction to be completed and then file a suit for eviction. It has further to be held that in the previous suit it was necessary to decide the question of title because only if title was held in the favour of the petitioner could an injunction have been given to it (in view of the averments of the present respondents).

Resultantly the findings of the Courts below that the judgment of the Civil Court is not only not binding but has no value at

all has to be set aside and it has to be held that the finding of the civil court regarding the relationship between the parties is binding on the Rent Controller. The respondent-tenant having denied the title of his landlord has disentitled himself from seeking the protection of the Rent Act and consequently has to be held liable to eviction on this short ground. In this context reliance can be placed on **Harish Chander (deceased) through LRs v. Mohinder Singh** reported as 2009(1) RCR (Rent) 680 wherein this Court held as follows:-

*“7. If the tenant had denied his relationship, the other consequence is what follows for non-payment of rent. Admittedly, the rent which was determined by the Court as being payable from 01.05.1983 has not been paid yet. The directions of the Court already made on 09.09.1985 which required the respondent to pay the rent before 17.09.1985 still remains unfulfilled. The non-payment of rent which affords a ground for eviction under Section 13(2)(i) is clearly attracted and the tenant is liable for eviction. The learned Senior Counsel also relies on the decision of this Court in **Narinder Singh Vs. Sarabjit Singh (2007-2) PLR 405** that when a tenant denied the relationship of landlord and tenant, there would be hardly any justification for the Rent Controller to frame an assessment order in pursuance to the provisions to proviso to Section 13(2)(1) of the Act. The judgment was rendered in the context of explaining the decision of the Hon'ble Supreme Court in **Rakesh Wadhawan Vs. Jagdamba Industrial Corporation (2003-2) 113 P.L.R 370**. There have been several other decisions of this Court affirming the said view that if there was a denial by tenant of landlord's title, the question of even affording an opportunity to pay rent by a particular date as contemplated in **Rakesh Wadhawan's case (supra)** did not apply. I find myself bound and in full agreement with the statement of law as expressed and the tenant is liable to be evicted. The order passed by the Rent Controller directing*

eviction is restored and the order of the Appellate Authority reversing the decision is set aside.”

For this reason it would not be necessary to go into other issues.

The petition is allowed.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

April 11, 2016
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