

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.5400 of 2015 (O&M)
Date of decision:10.11.2017

BanwariAppellant

V/S

Prem Kumar & othersRespondents

2. RSA No.5399 of 2015 (O&M)
Date of decision:10.11.2017

BanwariAppellant

V/S

Prem Kumar & othersRespondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present : Mr. Amandeep Singh, Advocate and Mr. Bhriugu Dutt Sharma,
Advocate for the appellant.

B.S WALIA, J. (Oral)

CM No.12850-C of 2015

For the reasons as are mentioned in the application, delay of
148 days in refiling of the appeal is condoned.

CM stands disposed of.

RSA No.5400 of 2015 (O&M)

1. This order shall dispose of two regular second appeals i.e.

Nos.5399 and 5400 of 2015 as common questions of law and facts are involved therein. For brevity, the facts are being taken from RSA No.5400 of 2015.

2. The defendant-appellant has challenged the judgment and decree passed by the Courts below on the ground that while decreeing the suit the Courts below failed to take into account that vide order dated 15.10.2003 passed by the Assistant Collector 1st Grade, Loharu, the appellant-defendant No.1 had been declared as occupancy tenant in respect of 30 kanals 4 marlas of land, and in the circumstances, the order of the learned Assistant Collector 1st Grade, Loharu was binding on the rights of the respondent-plaintiff.

3. A perusal of the judgment and decree of the Courts below reveals that the order passed by the Assistant Collector 1st Grade, Loharu, was held to be contrary to the provisions of Section 77 (3) (d) of the Punjab Tenancy Act, 1887 read with Section 2(i)(c) and Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 in view of the decision of the Full Bench of this Court in **Shiv Charan versus Financial Commissioner, Haryana and others 2005 (1) LJR 498**, wherein it has been held that after coming into force of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, it is only the Civil Court which has jurisdiction to determine the dispute as contemplated in Section 77(3) (d) of the Punjab Tenancy Act, 1887 and the jurisdiction of the Revenue Court would be barred.

4. Relevant extract of the decision of the Hon'ble Full Bench in **Shiv Charan's case (supra)** is reproduced hereunder:

“9. We are also of the opinion that the reliance of the learned counsel on **Omkar Singh's and Jiwan's** cases (supra) is misplaced. As already mentioned above, the learned Single Judge in **Omkar's** case merely noticed the judgment of this Court in **Amin Lal's** case and did not even remotely discuss the issues involved therein. In **Jiwan's** case, no reference was made to Amin Lal's case by the learned Single Judge through primary reliance was placed on **Raghubir Singh v. Beli Ram, 6 (1967)69 P.L.R. (Delhi Section) 396** to hold that a revenue Court alone could go into the dispute. We, however, find from perusal of the judgment in Amin Lal's case that the Division Bench had differed with the ratio of the judgment in **Raghubir Singh's case** (supra) by observing that "We, with all respect to the learned Judge did not find ourselves in agreement with him." We are, therefore, of the opinion that the judgment of the Single Bench in **Puran Lal Aggarwal's case** (supra) relying on the decision of **Amin Lal's** case (supra) lays down the correct law. It has accordingly to be held that after the coming into force of the Vesting Act, the Civil Court alone would have the jurisdiction to determine the dispute envisaged in Section 77(3)(d) of the Act and the jurisdiction of the revenue Court would be barred. The judgments of the Single Bench in Omkar Singh and Jiwan's cases (supra) and any other case likewise are over-ruled.

10. To our mind, therefore, a civil suit would lie with respect to both the categories of occupancy tenants envisaged in Section 2(f) of the Vesting Act.”

5. Since, admittedly, the claim filed by appellant-defendant No.1 before the Assistant Collector 1st Grade, Loharu, was for establishing his claim to right of occupancy, therefore, in view of the decision of the Hon'ble Full Bench in **Shiv Charan's case (supra)** the jurisdiction in respect thereto would fall exclusively before the Civil Courts and the jurisdiction of

the Revenue Court would be barred.

6. At this stage, learned counsel for the appellant contends that no doubt the jurisdiction of the Revenue Court is barred where occupancy rights are sought to be established but in the circumstances, since it is the Civil Court which has the jurisdiction to decide the matter, therefore, the appellant be granted liberty to pursue his claim before the Civil Court for establishment of his occupancy rights.

7. No fault can be found with the judgments and decrees of the Courts below in the light of the decision of the Hon'ble Full Bench in **Shiv Charan's case (supra)**. Accordingly, both the Regular Second Appeals are dismissed.

8. Needless to mention that the appellant would be at liberty to take recourse to the remedy as may be available to him in accordance with law.

9. With the aforementioned observations, both the Regular Second Appeals are dismissed.

November 10, 2017

ps

(B.S. WALIA)

JUDGE

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5399 of 2015 (O&M)

Date of decision:10.11.2017

Banwari

....Appellant

V/S

Prem Kumar & others

.....Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present : Mr. Amandeep Singh, Advocate and Mr. Bhriгу Dutt Sharma,
Advocate for the appellant.

B.S WALIA, J. (Oral)

CM No.12848-C of 2015

For the reasons as are mentioned in the application, delay of
148 days in refiling of the appeal is condoned.

CM stands disposed of.

RSA No.5399 of 2015 (O&M)

For orders, see order of even date passed in "RSA No.5400 of
2015 titled as "**Banwari versus Prem Kumar & others.**"

November 10, 2017

ps

(B.S. WALIA)

JUDGE

Whether speaking/reasoned

: Yes/No.

Whether reportable

: Yes/No.

