

106 RSA No.3303 of 2014 (O & M) and
RSA No.4330 of 2014 (O & M)

-1-

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

RSA No.3303 of 2014 (O & M)
Date of decision :18.08.2017

Vijay Kumar and another

...Appellants

Versus

Shri Durga Ashram Charitable Trust

...Respondent

RSA No.4330 of 2014 (O & M)

Shri Durga Ashram Charitable Trust

...Appellant

Versus

Vijay Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Punchhi, Advocate
for the appellant(s) in RSA No.3303 of 2014 and
for the respondent(s) in RSA No.4330 of 2014.

Mr. Mandeep K. Sajjan, Advocate
for the appellant(s) in RSA No.4330 of 2014 and
for the respondent(s) in RSA No.3303 of 2014.

ANIL KSHETARPAL, J.

CM No.3017-C of 2015 and CM No.10035-C of 2014

Applications are allowed.

The deficiency in Court fee has been made good. Delay, if any
is condoned.

Both the applications are disposed of.

CM No.10036 of 2014

Application is allowed.

Delay of 5 days in filing the appeal is condoned.

Main Case

By this common judgment, I shall be disposing of RSA Nos.3303 and 4330 of 2014 arising from a suit.

Plaintiff's-Trust filed a suit for recovery asserting that the defendants were earlier tenants in the shop. Plaintiff also claimed mesne profit for unauthorized occupation of the land after 28.02.2009 till handing over the possession.

It is not in dispute that the plaintiff-Trust had filed an eviction petition against the predecessor of the defendants and other persons which was allowed and pursuant thereto in an execution petition, the possession of the shop was taken on 01.04.2002.

The suit has been filed by the plaintiff-Trust for recovery of arrears of rent and for mesne profit after the eviction order was passed. Defendants contested the suit and pleaded that the suit is bad for non-joinder or mis-joinder of necessary parties. It is further claimed that the suit is barred by limitation as the plaintiff could not claim arrears preceding more than three years from the date of institution of the suit.

Learned trial court after appreciating the evidence available on the file, partly decreed the suit.

Defendants filed an appeal before the learned First Appellate Court. Learned First Appellate Court after re-appreciating the evidence available on the file, dismissed the appeal. However, the court found that with respect to certain amount claimed by the plaintiff, the suit is barred by the limitation. Learned First Appellate Court held that the plaintiff is not

date of institution of the suit.

RSA No.3303 of 2014 has been filed by the defendants whereas RSA No.4330 of 2014 has been filed by the plaintiff-Trust.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below.

Learned counsel for the defendants-appellants in RSA No.3303 of 2014 has submitted that the judgment passed by the Court is a result of non-reading of material evidence. He further submitted that the courts below have not appreciated the defence put-forth in the proper perspective. On the other hand, learned counsel for the appellant-plaintiff in RSA No.4330 of 2014 has submitted that learned First Appellate Court was in error while restricting the recovery only with respect to three years preceding the date of institution of the suit.

I have considered the submission of learned counsel for the parties. I do not find any good ground to interfere with the judgment passed by the learned First Appellate Court. Learned counsel for the appellant has not been able to point out any substantive misreading of evidence which would have any bearing on the result of the appeal. It is well settled law that the statement of the witness has to be read as a whole. One line in a statement can not be read in isolation from the remaining. Therefore, there is no substantive misreading of evidence.

Second argument of learned counsel for the defendants-appellants is that the Courts have not appreciated the defence put forth in proper perspective. I have considered the submission, however, there is no force as the courts below have examined the case in detail and after

106 RSA No.3303 of 2014 (O & M) and
RSA No.4330 of 2014 (O & M)

-4-

appreciating the evidence available on the file including the evidence produced by the defendant, have returned the concurrent findings of fact.

As regards, the appeal filed by the plaintiff-Trust, it is well settled that the suit for recovery can only be filed with respect to recovery of the amount due 3 years anterior to the date of filing of the suit. Rent becomes due and payable from month to month. Therefore, the learned First Appellate Court was correct in segregating the arrears of rent viz. recovery whereof had become time barred. There is no error in approach of learned First Appellate Court.

Considering the case in totality, no error is found in the judgment passed by the learned First Appellate Court.

Hence, both the appeals are dismissed.

18.08.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No