

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

114

2023:PHHC:125398

RSA-5055-2014

Date of decision: 22.09.2023

SUNITA DEVI AND ORS.

..Appellants

Versus

BALDEV SINGH AND ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Deepak Arora, Advocate
for the appellants.

Mr. R.K. Singla, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. The plaintiff has filed this second appeal against the concurrent findings of fact arrived at by the Courts below. A counter claim was filed by the defendants in a plaintiffs' suit to the effect that they are entitled for decree for possession as the tenancy in favour of the plaintiff (since deceased) has been terminated vide notice under Section 106 of the Transfer of Property Act, 1882. In substance, the dispute between the parties is "whether the tenanted premises is situated within the municipal limits or outside" because the tenant claims that their tenancy is governed by the Punjab Rent Act, 1995 (hereinafter referred to as the "1995 Act").

2. On the other hand, it is the case of the owner that the property is situated in a village and therefore, the 1995 Act will not govern the tenancy.

3. The trial Court decreed the counter claim while dismissing the prayer for injunction. During the pendency of the first appeal, an application for permission to lead additional evidence was filed by the legal representatives of the original plaintiffs, who were the respondents in the plaintiff. They prayed for permission to produce the communication from the

Deputy Commissioner of the district certifying that the tenanted premises fall within the municipal limits. However, the First Appellate Court dismissed the same on the ground that the application has been filed after a period of three years from the date of filing of the appeal.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. The learned counsel representing the appellants contends that the aforesaid document is of primary importance that goes to the roots of the matter and if it is proved that the suit property is located within the municipal limits, the counter claim filed by the respondents shall not be maintainable and the proceedings under the 1995 Act shall only be maintainable.

6. On the other hand, the learned counsel representing the respondents contends that the First Appellate Court has correctly dismissed the application as well as the appeal.

7. This Court has considered the submissions of the learned counsel representing the parties.

8. In fact, the aforesaid document should have been permitted to be brought on record by the First Appellate Court under Order XLI Rule 27 (Clause b) of the Code of Civil Procedure, 1908, because the Appellate Court would require this document to pronounce the judgment. This is a pivotal document, which would decide the fate of the case. For maintaining a suit for possession, the landlord is required to prove that the tenancy is not governed by the 1995 Act. In such circumstances, the First Appellate Court has erred in refusing to permit the appellants to produce the document.

9. At this stage, the learned counsel representing the parties have come to a consensus. They submit that the judgment passed by the First Appellate Court should be set aside while remitting the matter back to the First Appellate Court to decide the matter afresh after permitting the parties to lead evidence on this aspect of the matter.

10. Keeping in view the aforesaid facts, the judgment passed by the First Appellate Court is set aside.

11. The application filed by the appellants for permission to lead additional evidence shall stand allowed. The appellants shall be permitted to prove the aforesaid document. The respondent shall also be granted an opportunity to rebut the same. The First Appellate Court is requested to make sincere endeavour for deciding the appeal afresh within a period of six months, from today.

12. With these observations, the appeal is disposed of.

13. All the pending miscellaneous applications, if any, are also disposed of.

September 22nd, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No