

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

**Reserved on 4th of November, 2024
Pronounced on 4th December, 2024**

RSA No.2978 of 1994 (O&M)

Avinash Sethi and another

Versus

....Appellants

MC Patiala and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Harmanjit S. Sethi, Advocate
for the appellants.

Mr. Sanjeev Soni, Advocate with
Mr. Sarthak Soni, Advocate
for the respondents.

PANKAJ JAIN, J.

Plaintiffs are in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellants as the plaintiffs and the respondents as the defendants.

3. Plaintiffs filed suit seeking decree of permanent injunction restraining against the defendants from recovering Rs.25,474-26 paise as House Tax from the plaintiffs for the year 1972-72 till 1987-88 in respect of property bearing No.3077/1 and that bearing No.3077 situated in Dharampura Bazar, Patiala. It was claimed by the plaintiffs that the plaintiffs filed appeal on 29.04.1977 which was decided on 20.07.1977. Appellate Court assessed the property in dispute to Rs.900/- per month in

all. Despite the said order, a notice was issued by the defendants whereby the property was proposed to be assessed at Rs.4,000/- per month. The plaintiffs again filed appeal which was accepted vide order dated 15.04.1981 and again property was assessed to Rs.900/- per month and the applicants were ordered to pay House Tax on the rental value of Rs.450/- per month for each of the property i.e. total rental value of Rs.900/- per month. However, defendants again assessed the property to Rs.2,000/- per month i.e. Rs.1,000/- each. Thus, the recovery being effected is illegal and deserves to be stayed.

4. Suit was contested by the defendant/Municipal Committee, Patiala claiming that the orders passed by the Appellate Authority related to the assessment year for which dispute was raised by the plaintiffs and appeal was preferred. However, Municipal Committee has right to reassess the property for subsequent years and thus, is entitled to recover the same. Apart from contesting on merits, an objection was raised w.r.t. jurisdiction of the Civil Court being barred under the Punjab Municipal Act as well as under the provisions of Punjab Land Revenue Act.

5. The suit filed by the plaintiffs was put to trial framing following issues:

- “1. Whether the civil court has no jurisdiction to try the suit?
OPD.
2. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD.
3. Whether the disouted recovery is the time barred, illegal null and void? OPP.

4. Whether the plaintiff is entitled to the relief prayed for?
OPP.
5. Relief.”

6. Despite having availed 12 opportunities, plaintiffs failed to adduce any evidence. So much so the plaintiffs failed to deposit the process fee and the diet money and they did not examine themselves. The evidence of the plaintiffs was ordered to be closed by order and the suit was dismissed invoking provisions of Order 17 Rule 3 CPC.

7. The aforesaid findings have been affirmed by the Lower Appellate Court.

8. While assailing the impugned judgments passed by the Courts below, Counsel for the appellants Mr. Sethi has argued that certified copies of the orders passed by the Appellate Authority dated 20.07.1977 and that 15.4.1981 were placed on the file. The suit was being adjourned not on account of fault on part of the appellants but on account of lawyer's strike or for the reason the Presiding Officer did not hold the Court. Thus, the Courts below erred in invoking Order 17 Rule 3 CPC to dismiss the suit filed by the plaintiffs.

9. Per contra, Counsel for the respondents submits that it was an injunction suit. Despite availing 12 opportunities, the appellants failed even to deposit the diet money and opted not even to examine any of themselves. Thus, no fault can be found with the findings recorded by the Trial Court.

10. I have heard counsel for the parties and have gone through records of the case.

11. Plaintiffs instituted suit on 24.12.1987. Issues were framed on 09.06.1989 and the suit was adjourned to 08.09.1989. On 08.09.1989, no PW was present. Case was adjourned to 16.09.1989. On 16.09.1989, again no PW was present and the suit was thereafter adjourned to 11.10.1989. On 11.10.1989, again no PW was present and an adjournment was requested. Matter was adjourned to 21.10.1989. On 21.10.1989, again no PW was present. Request made was for another adjournment. The matter was adjourned to 11.11.1989. The situation remained same even on 11.11.1989 and thereafter on 16.12.1989 the matter was adjourned to 20.01.1990. There being no witness/evidence coming-forth, the matter was adjourned to 03.02.1990. The situation remained same and the matter was adjourned to 21.04.1990. On 21.04.1990, the matter was transferred to the Court of Senior Sub Judge, Patiala. The parties were directed to appear before the concerned Court on 18.05.1990. Thereafter, the matter was adjourned to 13.06.1990 for the evidence of the plaintiffs. On 13.06.1990 again there was no evidence adduced by the plaintiffs and the matter was adjourned to 09.08.1990. It is only thereafter that the Trial Court invoked Order 17 Rule 3 of the Code of Civil Procedure, 1908 dismissing the suit filed by the plaintiffs. The ground pleaded by the appellants to the effect that the matter was adjourned either on account of strike by the Advocates or for the reason that the Presiding Officer was on leave, is against the record and thus cannot be accepted.

12. Order 17 Rule 3 CPC reads as under :

Order XVII

3. Court may proceed notwithstanding either party fails to produce evidence, etc.—Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed [the Court may, notwithstanding such default,

(a) if the parties are present, proceed to decide the suit forthwith; or

(b) if the parties are, or any of them is, absent, proceed under rule 2].

13. The plaintiffs opted not to lead any evidence. They themselves also remained conspicuously absent from witness-box. Thus, Trial Court rightly invoked Order 17 Rule 3 CPC and dismissed the suit filed by the plaintiffs for having failed to produce the evidence.

14. Finding no fault in the approach of the Courts below, this Court finds that the instant appeal sans merit. Resultantly, the instant second appeal is ordered to be dismissed.

15. Pending application, if any, shall also stand disposed off.

December 04, 2024

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No