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**(1964) 12 P&H CK 0015**

**In the Punjab And Haryana At Chandigarh**

**Case No : Civil Miscellaneous No. 3874 of 1963**

Mahla Singh

APPELLANT

Vs

Financial Commissioner (Revenue) and Another

RESPONDENT

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**Date of Decision : 10-12-1964**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 2(1)  
Constitution of India, 1950 — Article 227  
Court Fees Act, 1870 — Section 7  
Punjab Security of Land Tenures Act, 1953 — Section 10(2), 14A

**Citation : (1965) 1 ILR (P&H) 667**

**Hon'ble Judges : Shamsher Bahadur, J**

**Bench : Single Bench**

**Advocate : N.L. Dhingra, for the Appellant; P.N. Aggarwal, for A.G., for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Shamsher Bahadur, J.—The subject-matter of challenge in this petition under Article 227 of the Constitution of India is the order of the Financial Commissioner (Revenue), Punjab, directing the Assistant Collector 2nd Grade to adjudicate upon the dispute raised by the landlord for the recovery of rent claimed by him.

2. The second Respondent Kashmiri Lal applied under the summary procedure of the Punjab Security of Land Tenures Act, 1953, for recovery of arrears of rent from his tenant Mahla Singh, who is the Petitioner in this case. It was stated in the application that though the arrears of three previous harvests amounted to Rs. 1,339.41 nP., the claim was confined to Rs. 1,000. The Assistant Collector 2nd Grade, Fazilka, rejected the application on the ground that he had no jurisdiction to entertain the claim, his pecuniary jurisdiction being limited to Rs. 1,000 while the actual sum to which the landlord was entitled was Rs. 1,339.41 nP. The Collector concurred in this view and dismissed the appeal of the landlord. The Commissioner, however, being of the opinion that the amount actually claimed by the landlord determined the jurisdiction of the Assistant Collector,

recommended the case to the Financial Commissioner for setting aside the orders of the Assistant Collector 2nd Grade and the Collector. The Financial Commissioner in his order of 7th of November, 1963, has accepted the reference made to him by the Commissioner on 25th March, 1963, and has remanded the case to the Assistant Collector 2nd Grade for disposal on merits. The tenant-Petitioner seeks to quash this order under Article 227 of the Constitution of India.

3. Section 14-A of the Punjab Security of Land Tenures Act, 1953 provides a summary procedure for a landlord to eject his tenant and to recover arrears of rent. Under clause (ii) of this section--

a land-owner desiring to recover arrears of rent from a tenant shall apply in writing to the Assistant Collector, Second Grade having jurisdiction, who shall thereupon send a notice in the form prescribed, to the tenant either to deposit the rent or value thereof, if payable in kind, or give proof of having paid it or of the fact that he is not liable to pay the whole or part of the rent, or of the fact of the landlord's refusal to receive the same or to give a receipt, within the period specified in the notice. Where, after summary determination, as provided for in Sub-section (2) of Section 10 of this Act, the Assistant Collector finds that the tenant has not paid or deposited the rent, he shall eject the tenant summarily, and put the land-owner in possession of the land concerned.

Under Sub-section (2) of Section 10 of the Act, the Assistant Collector is empowered on the receipt of the application after giving notice to the parties in writing and a reasonable opportunity to be heard, to determine the dispute summarily and is required to keep a memorandum of evidence and a gist of his final order with brief reasons therefor.

4. The tenant's case throughout has been that the landlord had applied for recovery of a lesser amount than the one to which he was entitled with the object of vesting the Assistant Collector 2nd Grade with a summary jurisdiction in order to harass him. It is not in dispute that the Assistant Collector 2nd Grade under the provisions of the Punjab Tenancy Act, 1887 is invested with powers to determine disputes relating to recovery provided "the rent or sum claimed does not exceed Rs. 1,000". Clause 11 of the Punjab Security of Land Tenures Rules, 1953, provides that in all matters of procedure not provided for in the Punjab Security of Land Tenures Act or its Rules the procedure prescribed for Revenue Officers by the provisions of the Punjab Tenancy Act shall be applicable. It is clear therefore that the jurisdiction of the Assistant Collector 2nd Grade depends on the amount of arrears claimed and not the amount which is actually due to the landlord. It may be reiterated that Clause (ii) of Section 14-A of the Punjab Security of Land Tenures Act makes no mention of the pecuniary jurisdiction of the Assistant Collector 2nd Grade. All that is said is that the application is to be presented before "the Assistant Collector Second Grade having jurisdiction". Even if the jurisdiction is understood to be confined to the pecuniary limit, the officer concerned is empowered to determine the question of recovery wherever the amount claimed is less than Rs. 1,000. It may be observed in parenthesis that

even under the general law in regard to such matters embodied in Section 7(i) of the Court-fees Act, 1870 "the amount of fee payable \* \* \* shall be computed \* \* \* in suits for money \* \* \* according to the amount claimed". Although the sum due was Rs. 1,339.41 nP., the landlord could claim the lesser amount in the application made u/s 14-A (ii) of the Act and the amount claimed would really be the decisive factor in determining the question of jurisdiction.

5. The Learned Counsel for the Petitioner Mr. Dhingra has sought to evade this conclusion by a series of arguments which appear to me to be artificial. It is contended in the first instance that the tenant would be deprived of the procedure which would have been available to him if the amount claimed had been more than Rs. 1,000 inasmuch as he becomes liable under the summary procedure to be called upon to make immediate payment of the amount which may be found due from him. When the procedure under the Punjab Security of Land Tenures Act permits a landlord to effect immediate recovery of a sum not exceeding Rs. 1,000, he cannot be denied this remedy if he abandons a portion of his claim to bring it within the limit of the pecuniary jurisdiction of the Assistant Collector. It is further argued that the learned Commissioner, who made the reference, was influenced by the provisions of Order 11 Rule 2(1) of the CPC which says that "every suit shall include the whole of the claim which the Plaintiff is entitled to make in respect of the cause of action; but a Plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court." Mr. Dhingra submits that the provisions of the CPC are not to be pressed into service in matters under the Punjab Security of Land Tenures Act or of the Punjab Tenancy Act. A person's right to relinquish a portion of his claim is a matter of general law and procedure and is in consonance with the principles of natural justice. Mr. Dhingra has relied upon a Privy Council authority of *Rachappa Subrao Jadhav Desai v. Shidappa Venkatrao Jadhav Desai* AIR 1918 P.C. 188, where the general rule was thus enunciated:

If any part of the Court-fee payable and paid was a fixed fee under schedule 2 of the Act, then the national value of the property of it cannot displace its real value for the purposes of jurisdiction.

That case related to a declaratory suit where a notional value could be fixed by a Plaintiff and the matter in dispute with regard to real value could be gone into while determining the question of jurisdiction. The present case is of a totally different kind as the claim is in respect of specific sum and it has to be emphasised that the landlord is abandoning a substantial portion of his claim in order to bring it within the limit of pecuniary jurisdiction of the Assistant Collector 2nd Grade. There is nothing unconscionable or harsh in the procedure adopted by the landlord. Indeed a substantial concession has been allowed to the tenant inasmuch as he has been saved from the trouble of paying the extra amount of Rs. 339.41 nP.

6. The Petitioner in any event has not suffered any injustice to invoke extraordinary jurisdiction of this Court under Article 227. There is nothing to

warrant the basic presumption of the Learned Counsel for the Petitioner that the "amount due" and not the "amount claimed" should be the determining consideration in reaching a conclusion about the jurisdiction of the Assistant Collector 2nd Grade.

7. This petition fails and is dismissed with costs.