

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

-.-

SAO 22 of 2012 (O&M)
Date of decision: 31.05.2016

Balour Singh and others

..... Appellants

Versus

Sucha Singh and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. K S Boparai, Advocate
for the appellants

Mr. Yogesh Goel, Advocate
for the respondents

-.-

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal has been directed against the judgment dated 21.11.2011 passed by the Additional District Judge, Ludhiana whereby the appeal preferred by the respondents/plaintiffs against the judgment and decree dated 31.07.2009 passed by the trial Court dismissing their suit, has been set aside and the case has been remanded to the trial Court to decide the same afresh after impleading Devinder Singh son of Shamsher Singh as a defendant and providing him an opportunity to file written statement and thereafter, the parties were left at liberty to lead fresh evidence.

declaration that they are owners in possession of land measuring 13 kanals 15 marlas, detailed in head note of the plaint on the basis of Will dated 19.07.1993 registered on 27.07.1993, purported to be executed by Jagir Singh son of Bachan Singh. Further prayer was made for grant of injunction restraining the defendants/appellants from transferring the suit land and dispossessing or interfering in possession of the plaintiffs.

On completion of pleadings of the parties, issues were framed for determination and the parties adduced evidence in support of their respective claims. After having heard counsel for the parties in the light of materials on record, the learned trial Court non-suited claim of the respondents/plaintiffs that they have become owners in possession of the suit land on the basis of registered Will dated 19.07.1993.

Feeling aggrieved, the respondents/plaintiffs carried the matter in appeal and the appellate Court without adverting to the findings of the learned trial Court on issue Nos. 1 to 3, 5 and 6, set aside the judgment and decree passed by the trial Court by taking into consideration issue No. 4 '*whether the suit is bad for non joinder and misjoinder of necessary parties?OPD*', in view of its observations recorded in para 14 of the judgment impugned.

Counsel for the appellants has submitted that the present suit was filed by the respondents/plaintiffs qua inheritance to the estate left behind by Shri Jagir Singh, father of respondents No. 1 to 3 and defendants and father-in-law of Smt. Baljit Kaur-respondent No. 4. In the written statement filed by defendants No. 1 to 3 (appellants No. 1 to 3 herein), they raised objection that the suit is bad for non-joinder and mis-joinder of

impleaded as a party to the suit and the suit is liable to be dismissed on this score alone. A specific issue was framed by the trial Court with issue No. 4, referred to herein-before. Despite a categoric plea raised by the appellants in the written statement and issue No. 4 having been framed by the trial Court, the respondents/plaintiffs did not bother to implead Devinder Singh son of Shamsher Singh as a party in the suit. It is further argued that the Court of appeal has put a premium upon inaction of the respondents to implead Devinder Singh son of Shamsher Singh as a party by setting aside the detailed and well reasoned judgment passed by the trial Court without appreciating in right perspective that the respondents/plaintiffs cannot be allowed to take advantage of their own wrong. It is further submitted that the appellate Court has adopted a unique procedure, unknown in law to set aside the judgment and decree passed by the trial Court without adverting to merits of various issues decided by the trial Court or recording a finding that the judgment passed by the trial Court suffers from any error much less illegality. It is vehemently argued that the manner in which the appellate Court has proceeded to dispose of the appeal, set aside the judgment and decree passed by the trial Court and remand the matter to the trial Court for adjudication afresh by no stretch of imagination can be brought within the purview and ambit of relevant provisions of Order 41 of the Code of Civil Procedure dealing with remand of a case. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court of India ***Municipal Corporation, Hyderabad v. Sunder Singh (2008) 8 Supreme Court Cases 485, P. Purushottam Reddy and another v. Pratap Steels Limited (2002) 2 Supreme Court Cases 686 and Gannmani Anasuya and others v. Parvatini Amarendra Choudhary and others (2007) 10 Supreme***

Court Cases 296.

Counsel for the respondents/plaintiffs, on the contrary, has supported the judgment passed by the Court of appeal with the submissions that no prejudice would be caused to the parties if the trial Court is left at liberty to decide the suit afresh in compliance with the directions issued by the appellate Court.

I have heard counsel for the parties and perused the records particularly the judgment impugned.

The appellate Court reproduced issue No. 4 at the end of para 13 of the judgment and held in para 14, reads as follows: -

“14. The burden to prove this issue was upon the defendants. Perusal of the written statement reveals that defendants took a specific plea in para No. 1 of preliminary objections of written statement wherein they have alleged that suit is bad for non joinder of Devinder Singh son of Shamsher Singh who has not been impleaded as a party to the present suit. During the course of arguments learned counsels for the defendants argued that the property of Jagir Singh is in dispute. Jagir Singh left behind plaintiffs, defendants as well as Shamsher Singh as his legal heirs. Shamsher Singh one of the sons of Jagir Singh has already died. He left behind Devinder Singh as his class-I legal heir. It is pertinent to mention here that Devinder Singh who was one of the Class-I legal heir of Jagir Singh (read Shamsher Singh) has not been impleaded by the plaintiffs although the plaintiffs have filed a suit for declaration that they are the owners in possession of the disputed land originally owned by Jagir Singh. Plaintiffs derive their right, title and interest on the basis of Will, alleged to be executed by Jagir Singh on

19.07.1993 whereas defendants derive their right, title and interest on the basis of natural inheritance. When such is the position, all the legal heirs of Jagir Singh were required to be impleaded in a suit for declaration. But nothing has been mentioned in the plaint or in the replication as one of the legal heirs namely Devinder Singh son of Shamsher Singh (since deceased) son of Jagir Singh has not been impleaded by the plaintiffs. The suit was not liable to be dismissed on the ground of non impleading of necessary party. The right course for the trial Court was to direct the plaintiffs to implead Devinder Singh son of Shamsher Singh son of Jagir Singh along with other natural heirs.

In para 15, the Court further held that since Devinder Singh son of Shamsher Singh being the necessary party has not been impleaded by the plaintiffs, the impugned judgment and decree is hereby set aside and the case is remanded to the learned lower Court to decide the same afresh after impleading Devinder Singh son of Shamsher Singh as a defendant and giving him an opportunity to file written statement.

A casual reading of the aforesaid extract substantiates contention of the appellants that the Court has not at all adverted to the findings of the trial Court on various issues pertaining to merits of the controversy in regard to entitlement of the respondents/plaintiffs to inherit to the estate of Shri Jagir Singh on the basis of testamentary succession by excluding other Class-I heirs i.e defendants/appellants along with Devinder Singh son of Shamsher Singh (since deceased) son of Jagir Singh. If the respondents/plaintiffs despite a specific objection having been raised in the written statement by the appellants/defendants did not bother to implead

their benefit by setting aside the judgment and decree passed by the trial Court and that too without advertting to the findings of the trial Court on merits of the case. Obviously, the answer is in the negative. The appellate Court has decided the appeal without having a clear understanding of the relevant provisions of Code of the Civil Procedure dealing with remand of a case and a plethora of judgments available on the issue and thus exercised jurisdiction in an arbitrary and whimsical manner, at the cost of prolonging agony of the litigating parties and wastage of precious time and resources of all concerned.

Counsel has referred to certain judgments passed by Hon'ble the Supreme Court of India but it would be unnecessary to dilate on the ratio laid down therein as setting aside the judgment of the trial court and remittance of the case for adjudication afresh in the given circumstances, by no stretch of imagination can fall within the purview of Rule 23 A of Order 41 CPC, relevant in the context. The mere fact that suit filed by the respondents/plaintiffs may fail for their failure to join Devinder Singh as a party, in no circumstances, can be allowed to operate to their benefit by setting aside the judgment and decree passed by the trial Court. Counsel for the respondents/plaintiffs is not in a position to justify the order on any score whatsoever.

In view of what has been discussed herein above, the appeal is allowed, the impugned order is set aside and the mater is remitted to the first appellate Court for decision of the appeal afresh, in accordance with law. Parties through their counsel are directed to appear before the appellate Court on 20.07.2016. The appellate Court shall put its best endeavour to dispose of the appeal within a period of three months from the date of

parties putting in appearance.

(Rekha Mittal)
Judge

31.05.2016
mohan bimbra