

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5332 of 2015
Date of decision : August 20, 2015

Baldev Krishan Tandon

..... Petitioner

Versus

Major Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajan Bansal, Advocate
for the petitioner.

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

Amit Rawal, J (oral).

The present petition has been filed at the instance of the petitioner-plaintiff to impugn the order dated 16.5.2015 (Annexure P-5) whereby the application for consolidation of two suits; one suit for recovery titled as Baldev Krishan Tandan and another Vs. Major Singh and another bearing C.S.No.959 and another for declaration and permanent injunction titled as Baldev Krishan Tandan and another Vs. Major Singh and others bearing C.S.No.1059 has been dismissed.

Learned counsel for the petitioner-plaintiff submits that necessity for filing the suit for damages arose when the suit of the defendant for permanent injunction against the petitioner-plaintiff had been dismissed.

The aforementioned suit filed on 7.4.2010, thereafter the respondent-defendant has sold the land in dispute owned by the petitioner which necessitated him to seek setting aside of the sale deed for filing the suit for declaration on 21.7.2010.

In the aforementioned suit the issues were framed which reads thus:-

In the suit for declaration:-

- 1. Whether the plaintiffs are entitled to declaration as prayed for?OPP*
- 2. Whether the plaintiffs are entitled to permanent injunction as prayed for?OPP*
- 3. Whether the plaintiffs have no locus standi to file the present suit?OPD*
- 4. Whether the suit is not maintainable in the present form?OPD*
- 5. Whether the suit is time barred?OPD*
- 6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD*
- 7. Relief.*

In the suit for recovery”

- 1. Whether plaintiff is entitled for recovery of Rs.4 lacs as damages, if so, at that rate of interest?OPP*
- 2. Whether plaintiff is barred by his act and concoct from filing the present suit?OPD*
- 3. Whether suit of the plaintiff is within time?OPP*
- 4. Whether the suit is maintainable?OPP*
- 5. Whether plaintiff has no locus standi to file the present suit?OPD*
- 6. Relief.*

He further submits that the order dismissing the application for consolidation of the suit is erroneous and suffers from

illegality and is liable to be set aside. In support of his contentions he relied on the judgments in **Zakinaben and others Vs. Babubhai Alimohmad Kapadia and others 1999 AIR (Gujrat) 118, Manakchand Ruthia Vs. Rajendra Kumar Agrawal and another 2008 (2) MPHT 64 Shijo Antony Vs. Sebastian Joseph 2010 (7) RCR (Civil) 1312, Badineni Munenna Vs. Veeramareddy Lakshmi Devi 2010 (7)RCR (Civil) 1076, Lichhman Singh Vs. Mahaveer Singh and another 2013 (3) W.L.N. 447 and Shikhar Chand Vs. Suresh Chand and another 2009(5) RCR (Civil) 88.**

I have heard learned counsel for the petitioner and perused the paper book as well as case law cited at bar.

No doubt there is no jurisdiction vested in the civil court for consolidation of the suit except inherent powers under Section 151 CPC.

There is no dispute to the ratio decidendi culled out in the aforementioned judgments but the fact remains that the ratio decidendi culled out has been on the basis of the facts that nature and cause of dispute in both the cases was same but here in the present case, cause of action for filing damages arose to the petitioner-plaintiff when the suit for permanent injunction at the instance of the respondent-defendant had been dismissed but thereafter another cause of action arose when the sale deed was executed by the respondent-defendant which necessitated to seek its declaration and setting aside by filing subsequent suit. It is a matter of record that in the suit for declaration the plaintiff has lead the evidence and respondent-defendant's evidence is to be lead whereas

other suit is at the stage of plaintiff's evidence. Thus, the stage of the suit is different. It is stated at bar that both the suits are tried by the same Court. The petitioner can seek indulgence of the trial court for fixing the aforementioned suits on the same date.

There is no merit in the revision petition. The same is accordingly dismissed.

(AMIT RAWAL)
JUDGE

August 20, 2015
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