

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

RSA No. 3224 of 2011 (O&M)

Date of Decision: 8.5.2015

Bhajan Singh @ Harbhajan Singh and another ...Appellants

Versus

Mohan Lal ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vikas Bahl, Sr. Advocate with
Ms. Samiya Singh, Advocate for the appellants

Mr. Naveen Sharma, Advocate for the respondent

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

This appeal is against a judgment of reversal preferred by the defendant. It is a matter of some surprise that the first appellate court in a simple suit for permanent injunction seeking restraining of the defendants from interfering in the peaceful possession of the plaintiff over the suit property has not returned its findings issue-wise nor has considered the reasoning given by the learned trial court recorded on the question of possession not vesting in the plaintiff and therefore disentitling permanent injunction and whether such findings are good

or bad, and instead has proceeded to decide the appeal in short cut the sum and

substance of which rests on suspect reasoning recorded in the judgment in appeal as follows:-

“...Counsel for the respondent stated that the respondent will not interfere in the possession of the appellant in the individual capacity. Accordingly, counsel for the respondent has argued that the suit of the plaintiff/appellant be decreed accordingly”

The logic of such a direction is hard to fathom or what was meant by ‘individual capacity’ in the context of the case. It is trite to say that the first appellate Court exercising jurisdiction under Section 96 of the CPC is the last court of fact and law and enjoys more power in the width and breadth of its jurisdiction than this court does in second appeal under Section 100, CPC. They are thus expected to decide appeals issue-wise in their plenary appellate power which is of wide amplitude and import, which has sadly not been done in this case, restricted as it is by omitting many seriously debatable issues from the discussion altogether and at least at one place imagining pleadings where none exists and basing it as one of the factors in decision making which requires no pointing out here, as I am certain it will be argued in case the appeal is remitted as the flaw was pointed out to this Court with success by the appellants.

It would do well for all the first appellate courts to acquaint themselves with the subject case law where the entire legal position has been culled out on the reading of past precedents of the Supreme Court delineating the duties of the first appellate court and one of which ruling is rather handy and one stop judgment of this Court in **Smt Harjit Grewal and others vs. Dr Vinod Kumar Batra and others**, 2010(5) RCR (Civil) 340 especially paragraph 57 of the report observing that the learned first appellate court should record issue-

wise findings. The first appellate court being a court of appeal was held to be bound to answer all the issues framed and in case any of the issues was not pressed in appeal, the same should be recorded. Much of the foundation of the work done in this Court on the second appeal side depends on the wisdom and experience of the first appellate court whose duty is to crease out the errors found in the trial court judgments as trial judges dependable friend, philosopher and guide where trial judges may not be found fully knowledgeable and experienced in the laws and their niceties while sitting in Junior Division. I should not be misunderstood as having made any comment on the trial court judgment whatsoever. I have spoken only on a generalization of the responsibilities of the superior judicial services in its top echelons as a lot more is expected and demanded from them to act as role models for the subordinate judiciary who are yet in the learning curve but shining brightly on the impartial path of doing justice.

No comment on the merits of the issues is required to be made since this Court is convinced after hearing Ms. Samiya Singh for the appellants and Mr Sharma for the respondent and later joined by Mr Vikas Behal, the learned senior counsel for the appellants, that the judgment and decree of the first appellate court does not deserve to be sustained as it is not a correct view in the eyes of law, and therefore, this is a fit case where the matter should be remanded for fresh decision. In cases where issue-wise findings are not returned in first appeal that alone would constitute ground enough for interference and one which gives rise to a substantial question of law by itself. For this reason, nothing said in this order will be taken as an expression of opinion on the issues involved and on the merits of the cases of the respective parties.

Resultantly, this appeal is allowed and the judgment and decree dated 16th

April, 2011 passed by the learned District Judge, S.B.S.Nagar is set aside and

the matter is remanded for fresh decision on the appeal which stands restored to its original number.

Parties are directed to appear before the learned District Judge, S.B.S.Nagar on 28.5.2015 for further proceedings.

8.5.2015
MFK

(RAJIV NARAIN RAINA)
JUDGE