

IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH**RSA No.1018 of 2012****Date of Decision: 18.09.2015**

Malkiat Singh

... Appellant

Versus

Nazar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Mr. Harsh Aggarwal, Advocate,
for the respondents

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 regular second appeal has been filed against the judgment and decree dated 19.01.2012 rendered by Lower Appellate Court, whereby the appeal of the plaintiffs against the judgment and decree dated 06.08.2009 passed by the Ld. Trial Court, dismissing the suit has been accepted and Ld. Trial Court has been directed to decide the suit denovo after framing an issue regarding oral exchange of property.

Mr. Vikas Bahl, Learned counsel for the appellant submits that parties have led evidence with regard to oral exchange which has been discussed by the Trial Court. On the basis of the same, the lower appellate Court while invoking the provisions of Code of Civil Procedure and not resorted to Order 41, Rule 24 could have framed/settled the issue and decide appeal. He further submits that lower appellate Court has not given any finding and erroneously remanded the matter and, therefore, the impugned judgment and decree is not sustainable in law.

He further submits that additional issue vis-a-vis issue regarding oral exchange, lower appellate Court at the best, in the absence of any evidence could, have, after framing all issues, sought report from the Trial Court instead of remanding the matter back.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of respondents-plaintiff submits that there is no illegality and perversity in the impugned judgment and decree, much less, no substantial questions of law arises for determination.

I have heard learned counsel for the parties and appraised the paper book.

The impugned judgment and decree of the appellate Court would reveal that parties to the lis with regard to the oral exchange have examined their respective witnesses and the Trial Court adjudicated the said lis.

Without commenting on the merits and de-merits of the case as well as rival contentions, I deem it appropriate that impugned judgment and decree of the lower appellate Court is not in consonance with law i.e. as per provisions of Order 41, Rule 24, CPC, thus, is liable to be set aside and accordingly set aside and the matter is remitted back to the lower appellate Court to decide the appeal afresh as the parties had already led the evidence on oral exchange. In essence, the lower appellate Court can frame additional issue and decide the appeal in accordance with law.

Accordingly, the appeal stands disposed of and the case is remitted back to the lower appellate Court and the parties through their counsels are directed to appear before the Lower Appellate Court on 19.10.2015.

18.09.2015
Dinesh

(AMIT RAWAL)
JUDGE