

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1524 of 2012 (O/M)
Date of decision : 18.8.2015

Chhotu Ram

..... Appellant

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. B.S. Bairagi, Advocate, for the appellant.
Mr. Samervir Singh, Deputy A.G. Haryana,
for respondents.

1. Whether the Reporters of local newspaper 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 ?

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KULDIP SINGH, J. (ORAL)

This regular second appeal has been filed against the impugned order dated 28.11.2011, passed by the learned Additional District Judge, Karnal, vide which the appeal of the State of Haryana was accepted and the judgment and decree dated 26.5.2011, passed by the learned Civil Judge (Junior Division), Karnal, was set aside.

Learned counsel for the appellant contends that the plaintiff/appellant had filed a suit for mandatory injunction, directing respondent No. 1-Assistant Collector 2nd Grade, Karnal, to enter and sanction the required mutation of decree dated 12.5.1988, passed in

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Civil Suit No. 471 of 1988, titled as 'Bishan Dass etc. Versus Smt. Bishni etc. The suit was filed after 22 years i.e. on 16.12.2010. The lower Court decreed the suit, whereas the decree was reversed in appeal.

Learned counsel for the appellant states that infact the suit was required to be filed for declaration for correction of the revenue record on the basis of title, in which the other interested parties were also to be heard. It being so, he may be granted permission to withdraw the suit with permission to file a fresh one on the same cause of action, in which all the concerned interested parties shall be impleaded. Even State of Haryana was not made a party, as required under Order 27 Rule 5 of Code of Civil Procedure, 1908.

It being so, since there is a formal defect in the suit, therefore, the impugned judgment and decree dated 28.11.2011, passed by the learned Additional District Judge, Karnal, and the judgment and decree dated 26.5.2011, passed by the learned Civil Judge (Junior Division), Karnal, are set aside and the plaintiff/appellant is permitted to withdraw the suit with permission to file a fresh one on the same cause of action, as stated above, seeking declaration for correction of the revenue record after impleading all the interested parties in the suit. Since the plaintiff/appellant consumed considerable time of the Court and

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respondents/State by filing a wrong suit and then filing the appeal, therefore, the appellant shall also deposit Rs. 10,000/- as costs before the District Legal Services Authority, Karnal, as a pre-condition for filing the fresh suit.

The appeal is accordingly disposed of.

(KULDIP SINGH)
JUDGE

18.8.2015
sjks