

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2712 of 2012 (O&M)
Date of decision 10.03. 2015.

Sukhcharan Singh etc.

..... Appellants.

versus

Rai Sahib Mehta

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers 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?

Present : Mr.G.S.Virk, Advocate for the appellants.

K.C.PURI, J.

C.M. No.7342 C of 2012.

1. C.M. stands allowed.
2. Deficiency in Court fee is stated to be made good.

C.M. No.7343 C of 2012.

3. Along with the appeal an application under Section 5 of the Limitation Act for condonation of delay of eight days in filing the appeal has been filed.
4. For the reasons mentioned therein, the delay in filing the appeal stands condoned.
5. C.M. stands allowed.

MAIN CASE

6. Defendants-appellants-Sukhcharan Singh etc. have directed the present appeal against the judgment and decree dated 09.11.2009 passed by Smt. Neelam Arora, learned Additional District Judge, (Adhoc), Fast Track Court, Amritsar vide which the appeal against the judgment and decree dated 6.5.2009 passed by Ms. Sonia Kinra, learned Additional Civil Judge (Junior Division), Ajnala, was dismissed.

7. In brief, the case of the respondent-plaintiff is that the defendants filed civil suit No. 133 of 1981/83 for declaration to the effect that they are owners in possession of land measuring 160 kanals 6 marlas against the plaintiff and his family members. In the said suit, the plaintiff and the members of his family appeared and contested the suit and the said suit was decreed to the extent of 42kanals 7marlas as ownership and slightly more 10kanals 15Marlas total 53Kanals 2Marlas and no declaration was given regarding remaining properties. It is averred that against the said judgment and decree the defendants filed an appeal which was dismissed. In the said judgment, it was held that the defendants are in possession of more than their shares. Thereafter, against the said judgment and decree, the defendants filed a Regular Second Appeal which was dismissed. It is further averred that during the pendency of the case, the defendants tried to trespass their land bearing Killa Nos. 64/2/3, 3, 4 situated in Village Mudh Bhilowal. Thereafter, plaintiff filed Civil Misc. bearing No. 2566 of 1995 in this Court wherein another order of Status quo on 9.8.96 was passed and thereafter, the defendants filed a Civil Misc. No. 2719 of 1996 against the said order, which was dismissed. Thereafter, the defendants filed an SLP in

the Hon'ble Supreme Court against the said RSA No. 3133 of 1987 and the said SLP was also dismissed on 3.2.97. It is further averred that when the defendants lost their right, title or interest in the suit property from the lower court upto Hon'ble Supreme Court, thereafter, they filed two separate civil suits in respect of the suit property which was subject matter of the previous litigation, between the same parties and for the same land. In that case, plaintiff and the members of his family members appeared and the stay applications in both the suits were dismissed. Not only this, the defendants filed two separate appeals against the order dated 6.12.2000 whereby the application of defendants was dismissed. Both the suit were filed by defendants against the plaintiff just to harass them. It has further averred that the defendants again filed Civil suit No. 457 on 13.9.2000 against Sh. Labh Chand and Iqbal Chand. It is further averred that the plaintiffs moved the application U/o 1 rule 10 CPC in that suit to implead him as party for the same land. Sukhcharan Singh defendant managed his posting as Incharge of Guard of Sh.Vir Singh MLA of Lopoke and by misusing his powers unlawfully tress-passed the land of plaintiff bearing Killa No. 51, 13, 18 and cut down the Kikkar Trees and sold the same in open market and destroyed the wheat crops sown by plaintiff and various applications were moved by the plaintiff to the higher Police Officials and inquiry was conducted where Sukhcharan Singh admitted his guilty regarding cutting of Kikkar Trees. He was fined Rs.200/-. Sukhcharan Singh again unlawfully tress-passed into the tubewell of plaintiff with armed weapons and gave merciless beating to employees of plaintiff and after verifying the occurrence Deputy Commissioner, Amritsar opened two inquiries, which are still pending

against him. It is further averred that Sukhcharan Singh tried to harvest wheat crops of plaintiff despite the order of status quo dated 27.6.96. Besides all this civil litigation, the defendants also dragged the plaintiff in the revenue litigation for the same land. It is further averred that Apar Singh (deceased) and Dilbagh Singh real uncles of Sukhcharan Singh filed false, frivolous and baseless application regarding correction of Khasra Girdawari on 25.4.1980 and the said application of the defendants was dismissed. Thereafter, the defendants filed an appeal in the court of Sub Divisional Officer (Civil)-cum-Collector, Ajnala on 10.2.1981 and the same was dismissed. Then they filed a Revision against the said order before the Court of Commissioner (Appeals) Jalandhar which was also dismissed. On 5.2.1996, Sukhcharan Singh again filed false, frivolous application regarding correction of khasra girdawaries against the dead person Joginder Pal and others in the court of Tehsildar-cum-Collector, Ajnala regarding the same land which had already been decided in favour of the plaintiff upto Hon'ble Supreme Court of India as well as from the Revenue Court of AC IInd Grade, Ajnala upto Commissioner (Appeals) Jalandhar Division, Jalandhar. When the said application regarding Correction of Khasra Girdawari was pending in the court of Tehsildar, Ajnala, the Presiding Officer of the said Court was won over by Sukhcharan Singh. Thereafter, the said case was transferred to some other court and plaintiff filed a complaint against the said Presiding Officer also before Commissioner (Appeals) Jalandhar Division, Jalandhar who recorded the statements of the plaintiff and then an inquiry was conducted. Thereafter, the plaintiff filed an appeal against the order dated 20.9.1996 in the court of SDM-cum-collector,

Ajnala and seeing the political pressure on the said officer and the said officer was won over by the other party, then the plaintiff compelled to file the transfer application to the Deputy Commissioner, Amritsar and he stayed the proceedings and transferred the said appeal which was accepted and remanded back his case to the court of Tehsildar-cum-AC IInd Grade, Ajnala. After examining judgments from the lower courts upto Hon'ble Supreme Court as well as revenue records and orders of Executive Magistrate, Amritsar dated 20.9.96 was set aside vide order dated 3.7.98 after spot inspection in the presence of parties and dismissed the application of Sukhcharan Singh vide order dated 21.12.1998. No appeal was filed by defendants against the said order till date. It is further averred that due to political pressure, the defendants in connivance with the police officials illegally initiated the proceedings U/S 145 Cr.P.C. qua the said property-in the court of SDO (Civil), Amritsar and the said proceedings were contested by plaintiff. After examining revenue records and recording the statements of plaintiff, Patwari of Halqa dropped the proceedings and directed the police of P.S. Lopoke to deliver the actual physical possession of the suit property to the plaintiff vide his order dated 26.5.2000. It is further averred that the defendants filed a criminal revision which was pending. After taking demarcation from the Halqa Patwari, the police of P.S. Lopoke handed over the possession of the suit land to the plaintiff in the presence of opposite party. Thereafter, the defendants again filed the application for correction of khasra Girdawari regarding the same land in the court of AC IInd Grade, Ajnala which was pending. It is further averred that on 16.9.2000, the plaintiff alongwith his son visited his fields in routine and the

persons, namely, Pal Singh, Jagir Singh, Kashmir Singh, Lakha Singh, Gurcharan Singh, wife of Dilbagh Singh wife of Sukhcharan Singh and wife of Pal Singh made an abortive attempt to kill to death the plaintiff and his son and in this regard FIR No.184 dated 16/18.9.2000 under Sections 342/ 323/ 506/ 427/ 411/ 148/ 149 IPC and 25 of the Arms Act was registered and case was pending. On 16.10.2000, all the above said persons again attacked on the servants of plaintiff and badly injured and dragged and kidnapped Bhagwan Singh and took him to the residence of Sukhcharan Singh and in this regard FIR No. 206 dated 17.10.2000 U/S 307/ 325/ 326/ 324 /323 /506 /148 /149 IPC and 25 Arms Act was lodged and was pending in the court of Addl. Sessions Judge, Amritsar. It is further averred that again on 6.5.2001, same persons unlawfully tress-passed into the fields of plaintiff where wheat crops were sown by the plaintiff and they harvested forcibly with combine and FIR No. 59 dated 7.5.2001 U/S 379/506/148/149 IPC and 25 of Arms Act and Scheduled Caste and Scheduled Tribes Act was registered against them. It is further averred that all the cases filed by defendants were baseless, false and frivolous simply for harassing and torturing the plaintiff for grabbing out land by killing the plaintiff as well as his family members. The plaintiff spent more than Rs.5lacs on the said litigation. He also vasted his valuable time in the courts and traveling and due to this, he could not manage his work properly which gave mental worries to the plaintiff and the member of his family. He suffered heart attack and got himself treated in various hospitals. Due to failure of defendants in various courts, the defendants are still trying to kill the plaintiff and his family member. They are also threatening to kill them if

they do not withdraw the criminal cases. The plaintiff has also informed this matter to the higher authorities and gun man has been provided to the plaintiff due to illegal treats. The defendants have made the life of the plaintiff a hell. Hence, prayer for recovery of Rs.3,50,000/- along with interest @ 18 % p.a. and litigation. expenses of the present case, is made.

8. In pursuance of notice of the suit, defendants filed written statement alleging that the plaintiff has got no locus standi and cause of action to file the present suit, that the suit is not maintainable; that the plaintiff is estopped by his own act and conduct from filing the present suit, that the suit is not properly valued for the purposes of court fee and jurisdiction, that the suit of the plaintiff is time barred and that the suit is bad for non joinder of necessary parties. On Merits, it has been denied that the plaintiff is a Govt. Contractor and his predecessors were respectable persons. The said litigation was legal. It is further averred that every co-sharer has a right to get the record corrected in his favour. They never filed any suit with a mala fide intention. They have not tress-passed any land. They are co-sharers in possession of the suit land. The defendants purchased land from Labh Chand and Iqbal Chand and became co-sharers in possession. Remaining all averments have been denied and hence prayer has been made for dismissal of the suit was made.

9. In the replication, plaintiff controverted the plea taken up in the written statement and reiterated his stand taken in his plaint. From the pleadings of the parties, following issues were framed by the trial court:-

1. Whether the plaintiff is entitled to recover damages from the defendants on account of malicious prosecution, defamation, frivolous, baseless litigation filed by the

defendants, as alleged?, If so, to what extent? OPP

2. Whether the plaintiff is entitled to interest? If so, at what rate? OPP
3. Whether the plaintiff has got no locus standi and cause of action to file the present suit? OPD.
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD
6. Whether suit is within limitation? OPP.
7. Whether suit is properly valued for the purposes of court fee and jurisdiction? OPP.
8. Whether the suit is bad for non joinder of necessary parties? OPD.
9. Relief.

10. The parties have led their respective evidence on the aforesaid issues. After appraisal of the same, the trial Court vide judgment and decree dated 6.5.2009 decreed the suit of the plaintiff with proportionate costs.

11. Feeling dissatisfied with the aforesaid judgment and decree dated 06.05.2009, the defendants-appellants has directed the First Appeal, which was dismissed by learned Additional District Judge, Amritsar vide judgment and decree dated 09.11.2009 after re-appraisal of the evidence.

12. Still feeling dissatisfied with the judgment and decree dated 06.05.2009 and judgment and decree dated 09.11.2009, the present regular second appeal has been directed.

13. The defendants-appellants in paragraph No.07 of the grounds of appeal has mentioned that following substantial questions of law have

arisen in the present regular second appeal :-

- (a) Whether the impugned judgments and decrees dated 6.5.2009 and 9.11.2009 passed by Addl. District Judge, (Adhoc) Fast Track Court, Amritsar are contrary to law, evidence and facts on the file ?
- b) Whether the suit filed by the plaintiff in the present form was maintainable ?
- c) Whether plaintiff is entitled to interest @ 6%p.a. ?
- d) Whether the impugned judgments and decrees passed by Courts below are against law as well as without jurisdiction and principle of natural justice ?

14. The learned counsel for the appellants has submitted that judgments and decrees of both the courts below are contrary to law and evidence as well as facts. It is submitted that although in the second round of litigation the appellants had lost but another round of litigation is still pending and as such the suit for malicious prosecution is not maintainable. Both the Courts below have lost sight of the fact that to fight a litigation is a right and enshrined by the Constitution and for that purpose no damage in respect of malicious prosecution can be there.

15. I have carefully considered the said submission but do not find any force in that submission.

16. The counsel for the appellants could not point out how the judgments and decrees of both the Courts below are against facts and law. It is admitted by the counsel for the appellants during the course of arguments that in earlier litigation the appellants have lost upto Hon'ble Apex Court. It is submitted that second spell of litigation was simply regarding suit for injunction in which the appellants have lost. The appellants have lost litigation upto Supreme Court and even thereafter they started fresh

litigation in the shape of suit for permanent injunction in which also they failed. Since the finding of both the Courts below that appellants have caused malicious prosecution, the plaintiff now respondent, cannot be said to be wrong in any manner in suing the appellants in the present suit. Moreover, the second appeal lies only if any substantial question of law has arisen. The questions mentioned in paragraph No.07 of the grounds of appeal does not arise in the present case. After having lost in litigation upto to Hon'ble Apex Court, the appellants have started fresh litigation in which also they have failed. So, the findings of both the Courts that plaintiff is entitled to amount in respect of malicious prosecution on account of false, frivolous and baseless litigation stands proved and as such the present appeal is without any merit and as such the same stands dismissed.

17. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

March 10 , 2015

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3. Along with the appeal an application under Section 5 of the Limitation Act for condonation of delay of eight days in filing the appeal has been filed.
4. For the reasons mentioned therein, the delay in filing the appeal stands condoned.
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7. In brief, the case of the respondent-plaintiff is that the defendants filed civil suit No. 133 of 1981/83 for declaration to the effect that they are owners in possession of land measuring 160 kanals 6 marlas against the plaintiff and his family members. In the said suit, the plaintiff and the members of his family appeared and contested the suit and the said suit was decreed to the extent of 42kanals 7marlas as ownership and slightly more 10kanals 15Marlas total 53Kanals 2Marlas and no declaration was given regarding remaining properties. It is averred that against the said judgment and decree the defendants filed an appeal which was dismissed. In the said judgment, it was held that the defendants are in possession of more than their shares. Thereafter, against the said judgment and decree, the defendants filed a Regular Second Appeal which was dismissed. It is further averred that during the pendency of the case, the defendants tried to trespass their land bearing Killa Nos. 64/2/3, 3, 4 situated in Village Mudh Bhilowal. Thereafter, plaintiff filed Civil Misc. bearing No. 2566 of 1995 in this Court wherein another order of Status quo on 9.8.96 was passed and thereafter, the defendants filed a Civil Misc. No. 2719 of 1996 against the said order, which was dismissed. Thereafter, the defendants filed an SLP in

the Hon'ble Supreme Court against the said RSA No. 3133 of 1987 and the said SLP was also dismissed on 3.2.97. It is further averred that when the defendants lost their right, title or interest in the suit property from the lower court upto Hon'ble Supreme Court, thereafter, they filed two separate civil suits in respect of the suit property which was subject matter of the previous litigation, between the same parties and for the same land. In that case, plaintiff and the members of his family members appeared and the stay applications in both the suits were dismissed. Not only this, the defendants filed two separate appeals against the order dated 6.12.2000 whereby the application of defendants was dismissed. Both the suit were filed by defendants against the plaintiff just to harass them. It has further averred that the defendants again filed Civil suit No. 457 on 13.9.2000 against Sh. Labh Chand and Iqbal Chand. It is further averred that the plaintiffs moved the application U/o 1 rule 10 CPC in that suit to implead him as party for the same land. Sukhcharan Singh defendant managed his posting as Incharge of Guard of Sh.Vir Singh MLA of Lopoke and by misusing his powers unlawfully tress-passed the land of plaintiff bearing Killa No. 51, 13, 18 and cut down the Kikkar Trees and sold the same in open market and destroyed the wheat crops sown by plaintiff and various applications were moved by the plaintiff to the higher Police Officials and inquiry was conducted where Sukhcharan Singh admitted his guilty regarding cutting of Kikkar Trees. He was fined Rs.200/-. Sukhcharan Singh again unlawfully tress-passed into the tubewell of plaintiff with armed weapons and gave merciless beating to employees of plaintiff and after verifying the occurrence Deputy Commissioner, Amritsar opened two inquiries, which are still pending

against him. It is further averred that Sukhcharan Singh tried to harvest wheat crops of plaintiff despite the order of status quo dated 27.6.96. Besides all this civil litigation, the defendants also dragged the plaintiff in the revenue litigation for the same land. It is further averred that Apar Singh (deceased) and Dilbagh Singh real uncles of Sukhcharan Singh filed false, frivolous and baseless application regarding correction of Khasra Girdawari on 25.4.1980 and the said application of the defendants was dismissed. Thereafter, the defendants filed an appeal in the court of Sub Divisional Officer (Civil)-cum-Collector, Ajnala on 10.2.1981 and the same was dismissed. Then they filed a Revision against the said order before the Court of Commissioner (Appeals) Jalandhar which was also dismissed. On 5.2.1996, Sukhcharan Singh again filed false, frivolous application regarding correction of khasra girdawaries against the dead person Joginder Pal and others in the court of Tehsildar-cum-Collector, Ajnala regarding the same land which had already been decided in favour of the plaintiff upto Hon'ble Supreme Court of India as well as from the Revenue Court of AC IInd Grade, Ajnala upto Commissioner (Appeals) Jalandhar Division, Jalandhar. When the said application regarding Correction of Khasra Girdawari was pending in the court of Tehsildar, Ajnala, the Presiding Officer of the said Court was won over by Sukhcharan Singh. Thereafter, the said case was transferred to some other court and plaintiff filed a complaint against the said Presiding Officer also before Commissioner (Appeals) Jalandhar Division, Jalandhar who recorded the statements of the plaintiff and then an inquiry was conducted. Thereafter, the plaintiff filed an appeal against the order dated 20.9.1996 in the court of SDM-cum-collector,

Ajnala and seeing the political pressure on the said officer and the said officer was won over by the other party, then the plaintiff compelled to file the transfer application to the Deputy Commissioner, Amritsar and he stayed the proceedings and transferred the said appeal which was accepted and remanded back his case to the court of Tehsildar-cum-AC IInd Grade, Ajnala. After examining judgments from the lower courts upto Hon'ble Supreme Court as well as revenue records and orders of Executive Magistrate, Amritsar dated 20.9.96 was set aside vide order dated 3.7.98 after spot inspection in the presence of parties and dismissed the application of Sukhcharan Singh vide order dated 21.12.1998. No appeal was filed by defendants against the said order till date. It is further averred that due to political pressure, the defendants in connivance with the police officials illegally initiated the proceedings U/S 145 Cr.P.C. qua the said property-in the court of SDO (Civil), Amritsar and the said proceedings were contested by plaintiff. After examining revenue records and recording the statements of plaintiff, Patwari of Halqa dropped the proceedings and directed the police of P.S. Lopoke to deliver the actual physical possession of the suit property to the plaintiff vide his order dated 26.5.2000. It is further averred that the defendants filed a criminal revision which was pending. After taking demarcation from the Halqa Patwari, the police of P.S. Lopoke handed over the possession of the suit land to the plaintiff in the presence of opposite party. Thereafter, the defendants again filed the application for correction of khasra Girdawari regarding the same land in the court of AC IInd Grade, Ajnala which was pending. It is further averred that on 16.9.2000, the plaintiff alongwith his son visited his fields in routine and the

persons, namely, Pal Singh, Jagir Singh, Kashmir Singh, Lakha Singh, Gurcharan Singh, wife of Dilbagh Singh wife of Sukhcharan Singh and wife of Pal Singh made an abortive attempt to kill to death the plaintiff and his son and in this regard FIR No.184 dated 16/18.9.2000 under Sections 342/ 323/ 506/ 427/ 411/ 148/ 149 IPC and 25 of the Arms Act was registered and case was pending. On 16.10.2000, all the above said persons again attacked on the servants of plaintiff and badly injured and dragged and kidnapped Bhagwan Singh and took him to the residence of Sukhcharan Singh and in this regard FIR No. 206 dated 17.10.2000 U/S 307/ 325/ 326/ 324 /323 /506 /148 /149 IPC and 25 Arms Act was lodged and was pending in the court of Addl. Sessions Judge, Amritsar. It is further averred that again on 6.5.2001, same persons unlawfully tress-passed into the fields of plaintiff where wheat crops were sown by the plaintiff and they harvested forcibly with combine and FIR No. 59 dated 7.5.2001 U/S 379/506/148/149 IPC and 25 of Arms Act and Scheduled Caste and Scheduled Tribes Act was registered against them. It is further averred that all the cases filed by defendants were baseless, false and frivolous simply for harassing and torturing the plaintiff for grabbing out land by killing the plaintiff as well as his family members. The plaintiff spent more than Rs.5lacs on the said litigation. He also vasted his valuable time in the courts and traveling and due to this, he could not manage his work properly which gave mental worries to the plaintiff and the member of his family. He suffered heart attack and got himself treated in various hospitals. Due to failure of defendants in various courts, the defendants are still trying to kill the plaintiff and his family member. They are also threatening to kill them if

they do not withdraw the criminal cases. The plaintiff has also informed this matter to the higher authorities and gun man has been provided to the plaintiff due to illegal treats. The defendants have made the life of the plaintiff a hell. Hence, prayer for recovery of Rs.3,50,000/- along with interest @ 18 % p.a. and litigation. expenses of the present case, is made.

8. In pursuance of notice of the suit, defendants filed written statement alleging that the plaintiff has got no locus standi and cause of action to file the present suit, that the suit is not maintainable; that the plaintiff is estopped by his own act and conduct from filing the present suit, that the suit is not properly valued for the purposes of court fee and jurisdiction, that the suit of the plaintiff is time barred and that the suit is bad for non joinder of necessary parties. On Merits, it has been denied that the plaintiff is a Govt. Contractor and his predecessors were respectable persons. The said litigation was legal. It is further averred that every co-sharer has a right to get the record corrected in his favour. They never filed any suit with a mala fide intention. They have not tress-passed any land. They are co-sharers in possession of the suit land. The defendants purchased land from Labh Chand and Iqbal Chand and became co-sharers in possession. Remaining all averments have been denied and hence prayer has been made for dismissal of the suit was made.

9. In the replication, plaintiff controverted the plea taken up in the written statement and reiterated his stand taken in his plaint. From the pleadings of the parties, following issues were framed by the trial court:-

1. Whether the plaintiff is entitled to recover damages from the defendants on account of malicious prosecution, defamation, frivolous, baseless litigation filed by the

defendants, as alleged?, If so, to what extent? OPP

2. Whether the plaintiff is entitled to interest? If so, at what rate? OPP
3. Whether the plaintiff has got no locus standi and cause of action to file the present suit? OPD.
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD
6. Whether suit is within limitation? OPP.
7. Whether suit is properly valued for the purposes of court fee and jurisdiction? OPP.
8. Whether the suit is bad for non joinder of necessary parties? OPD.
9. Relief.

10. The parties have led their respective evidence on the aforesaid issues. After appraisal of the same, the trial Court vide judgment and decree dated 6.5.2009 decreed the suit of the plaintiff with proportionate costs.

11. Feeling dissatisfied with the aforesaid judgment and decree dated 06.05.2009, the defendants-appellants has directed the First Appeal, which was dismissed by learned Additional District Judge, Amritsar vide judgment and decree dated 09.11.2009 after re-appraisal of the evidence.

12. Still feeling dissatisfied with the judgment and decree dated 06.05.2009 and judgment and decree dated 09.11.2009, the present regular second appeal has been directed.

13. The defendants-appellants in paragraph No.07 of the grounds of appeal has mentioned that following substantial questions of law have

arisen in the present regular second appeal :-

- (a) Whether the impugned judgments and decrees dated 6.5.2009 and 9.11.2009 passed by Addl. District Judge, (Adhoc) Fast Track Court, Amritsar are contrary to law, evidence and facts on the file ?
- b) Whether the suit filed by the plaintiff in the present form was maintainable ?
- c) Whether plaintiff is entitled to interest @ 6%p.a. ?
- d) Whether the impugned judgments and decrees passed by Courts below are against law as well as without jurisdiction and principle of natural justice ?

14. The learned counsel for the appellants has submitted that judgments and decrees of both the courts below are contrary to law and evidence as well as facts. It is submitted that although in the second round of litigation the appellants had lost but another round of litigation is still pending and as such the suit for malicious prosecution is not maintainable. Both the Courts below have lost sight of the fact that to fight a litigation is a right and enshrined by the Constitution and for that purpose no damage in respect of malicious prosecution can be there.

15. I have carefully considered the said submission but do not find any force in that submission.

16. The counsel for the appellants could not point out how the judgments and decrees of both the Courts below are against facts and law. It is admitted by the counsel for the appellants during the course of arguments that in earlier litigation the appellants have lost upto Hon'ble Apex Court. It is submitted that second spell of litigation was simply regarding suit for injunction in which the appellants have lost. The appellants have lost litigation upto Supreme Court and even thereafter they started fresh

litigation in the shape of suit for permanent injunction in which also they failed. Since the finding of both the Courts below that appellants have caused malicious prosecution, the plaintiff now respondent, cannot be said to be wrong in any manner in suing the appellants in the present suit. Moreover, the second appeal lies only if any substantial question of law has arisen. The questions mentioned in paragraph No.07 of the grounds of appeal does not arise in the present case. After having lost in litigation upto to Hon'ble Apex Court, the appellants have started fresh litigation in which also they have failed. So, the findings of both the Courts that plaintiff is entitled to amount in respect of malicious prosecution on account of false, frivolous and baseless litigation stands proved and as such the present appeal is without any merit and as such the same stands dismissed.

17. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

March 10 , 2015

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