

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 622 of 2012(O&M)
Date of decision :February 13, 2015

Akhtar Masih and others

..... Appellants

Versus

Rehmat Subhrai and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gaurav Mohunta, Advocate
for the appellants.

Mr. Harsh Bungar, Advocate
for respondent Nos. 1 to 5.

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).

This Regular Second Appeal at the instance of the appellants-defendants is directed against the judgment and decree of the trial court dated 22.7.2010 whereby the suit for possession of house shown red in the plan and marked ABCD, bounded as: East : Gali, West :House of Dhanpat, North: Rasta and South:Gali situated in the Abadi of Village Sansarpur, Tehsil and District Jalandhar has been decreed.

The defendants-appellants have been directed to hand over the vacant possession of the suit property within three months from the date of the order, failing which the liberty has been granted to the respondents-plaintiffs to seek the vacant possession in

accordance with law. However, the aforementioned direction due to inadvertence has not been incorporated in the decree sheet. The appellants-defendants assailed the aforementioned judgment and decree passed by the Civil Judge(Jr. Divn.), Jalandhar by filing an appeal. The appellate court being the last court of fact and law after examining the oral and documentary evidence dismissed the appeal and affirmed the findings of the trial court. It is in these circumstances the present Regular Second Appeal has been filed by the appellants-defendants.

Mr. Gaurav Mohunta, learned counsel appearing on behalf of the appellants-defendants in support of grounds of appeal submits that the trial court as well as the lower appellate court committed illegality and perversity in misreading the oral and documentary evidence, much less misdirected in arriving at a finding which ought not to have been returned in favour of the respondents-plaintiffs. Had the documentary evidence been examined in its correct perspective this regular second appeal would not have been arisen.

He further submits that in the previous round of litigation i.e.suit filed by Banti-mother of the present appellants-defendants the boundaries of the suit property were different than the one in the present suit and thus urged this Court that the appeal involves substantial question of law to be adjudicated by this Court.

Mr. Harsh Bunger, learned counsel appearing on behalf of the respondents-plaintiffs submits that there is no illegality and perversity in the finding rendered by both the courts below as

both the courts below after appreciating oral and documentary evidence decreed the suit of the respondents-plaintiffs, much less also found that the boundaries in the previous suit and present suit are identical and thus prays that the appeal be dismissed.

I have heard learned counsel for the parties, appraised the impugned judgments and decrees of both the courts below and also appraised the record with the assistance of the counsel for the parties and is of the view that the appeal is liable to be dismissed for the following reasons.

It is a matter of record that Banti-predecessor-in-interest of the appellants-defendants had filed a civil suit bearing No.97 of 1997 wherein a relief of permanent injunction restraining the defendants-therein and respondents-plaintiffs herein from interfering in the peaceful possession and also not to dispossess forcibly and illegally. In the previous suit the description of the property was given as under:-

West:	Property of Ganpat @ Harias
East:	Gali
North:	Gali
South:	Rasta

The aforementioned suit was dismissed vide judgment and decree dated 4.2.1999 Ex. P-4 and Ex.P-5. The trial court while dismissing the aforementioned suit held that the appellants-defendants herein and respondents-plaintiffs therein did not lead any cogent and convincing evidence to prove the ownership over the suit property.

The aforementioned judgment and decree attained finality up to this Court i.e. in RSA No. 801 of 2001 and this Court dismissed the appeal vide order dated 11.9.2001 filed by the appellants-defendants. During the interregnum Banti unfortunately expired.

With the aforementioned background, this Court adverts to the facts of the present case.

The respondents-plaintiffs on the basis of cause of action accrued in the year 2002 filed the suit for possession of the house shown red in the plan and marked ABCD which is stated to be bounded as under:-

East:	Gali
West:	House of Dhanpat
North:	Rasta
South:	Gali

The respondents-plaintiffs averred that the house in question was constructed by plaintiff No.1 and his wife Zeenat Subhrai who had since died by spending lot of money and labour. The plaintiffs resided in the said house for a long time. Even the marriage of son of plaintiff No.1 was also solemnized in the house, much less the electricity connection was also in the name of wife of plaintiff No.1. It has however, been stated that the plaintiffs were residing in U.K.and came to India oftenly. The defendants-appellants trespassed into the house in question in July, 2000.

The said suit was contested by the appellants-defendants by raising numerous preliminary objections, much less

qua the maintainability of the suit. The appellants-defendants also disputed the possession of the respondents-plaintiffs.

The trial court vide judgment and decree dated 22.7.2000 decreed the suit of the respondents-plaintiffs. The operative portion of the judgment is extracted hereinbelow:-

“As a result of above discussion, present suit stands decreed to the effect that he is entitled for the possession of the suit property. Defendant is directed to hand over the vacant possession of the suit property within three months from the date of order failing which, plaintiff will be entitled to get the vacant possession over the suit property through court. Decree sheet be prepared accordingly and file be consigned to judicial record room after due compliance.”

However, while framing the decree the direction to hand over vacant possession was somehow omitted. For the sake of brevity operative part of the decree is extracted hereinbelow:-

“This suit is coming on this 22nd day of July, 2010 for final disposal before me, Ajitpal Singh, PCS, Civil Judge(Jr.Divn.) Jalandahr in the presence of Sh. G. S. Matty Advocate,counsel for the plaintiffs and Sh. Davinder Moudgil Adv., counsel for the defendants.

In this case, it is hereby ordered that present suit stands dismissed with no order as to costs.”

Both the courts below have held that boundaries in the previous suit and present suit are same. Since details of the

properties of the previously instituted suit and the present suit have already been extracted, it leaves no manner of doubt that boundaries were and are identical. The appellants-defendants have failed to prove by leading direct and cogent evidence as to how the boundaries as alleged in the present appeal were different to one in the previous suit. On the contrary the respondents-plaintiffs have proved the ownership much less the description of property by leading direct and cogent evidence.

The respondents-plaintiffs have also produced on record copy of the sale deed dated 15.10.1940 Ex. PW2/2 and 19.12.1984 Ex. PW2/1 to show that they are owners. The trial court found that defendants possession over the suit property was illegal. Therefore, they had no right to remain in possession against the respondents-plaintiffs.

No fault can be found with the finding rendered by the trial court as well appellate court affirming the judgment of the trial court.

Both the Courts below have rendered a finding of fact and law after appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

Since there is an error in the judgment passed by the trial court by not incorporating the relief as given in the judgment, this Court by exercising the powers under Order 41 Rule 33 CPC modify the decree by incorporating the relief as noticed by the trial court and the decree would contain the element of direction to the

appellants-defendants to vacate the premises.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

Decree sheet be prepared.

(AMIT RAWAL)
JUDGE

February 13 , 2015
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