

Date of decision-07.12.2015

1. SAO-39-2012 (O&M)

SHIV INDER CHARAN SINGH TOOR ...Appellant
VS
SUBHASH CHANDER AND ANR ..Respondents

2. CR-1908-2013

SHIV INDER CHARAN SINGH TOOR ...Petitioner
VS
SUBHASH CHANDER AND ANR ..Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sudhir Pruthi, Advocate
for the petitioner.

Mr. B.R Gupta, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J (Oral)

[1] Vide this order, SAO No.39 of 2012 titled as Shiv Inder Charan Singh Toor Vs. Subhash Chander and another and CR No.1908 of 2013 tiled as Shiv Inder Charan Singh Toor Vs. Subhash Chander and another are being disposed of. Main order is being passed in SAO No.39 of 2012.

[2] Plaintiff-appellant filed suit for possession by way of specific performance of agreement to sell dated 07.04.1995 in respect of 6 kanal 7 marla of land on the basis of agreement. It appears that there were two agreements. On the basis of agreement to sell dated 21.03.1995, defendant No.1 agreed to sell suit land for a total sale consideration of Rs.3,75,000/- and the entire sale consideration was

received by the defendant No.1 at the time of execution of said agreement in part performance of the agreement to sell. Defendant No.1 executed General Power of Attorney in favour of plaintiff. After few days, defendant No.1 came to the plaintiff with request to execute fresh agreement because of closing of financial year. This agreement was executed by defendant No.1 on 07.04.1995 in order to avail benefit under income tax for the financial year 1995-96. In this way, new agreement to sell dated 07.04.1995 came in existence in lieu of agreement dated 21.03.1995.

[3] Plaintiff alleged that he was put in possession of the suit land on 07.04.1995 and since then he was continuing in possession in part performance of agreement to sell. Trial Court after due contest dismissed the suit vide judgment and decree dated 31.03.2009.

[4] In appeal before Lower Appellate Court, the Court allowed the application under Order 41 Rule 27 CPC, filed by the plaintiff-appellant vide which plaintiff intended to prove an entry with regard to purchase of stamp paper by defendant No.1 for the purpose of executing agreement to sell. The ground for adducing evidence was that the plaintiff came to know about the name of stamp vendor after decision by the trial Court. The Lower Appellate Court accepted the application for additional evidence of the plaintiff and observed that additional evidence should be allowed and the trial Court should give concrete finding with regard to the fact as to what is the effect of previous suit filed by defendant No.1 against the plaintiff. Judgment and decree of the trial Court was set aside. Additional issue 4-A was also framed to the effect that-

“Whether order passed in Civil Suit No.34 of 29.01.1996 titled as

Shiv Inder Chander Singh Toor Vs. Subhash Chander and another operates as res judicata? If so its effect. OPD”

[5] With this observation, Lower Appellate Court remanded the case back to the trial Court, directing both the parties to appear before the Civil Judge (Junior Division) Jalandhar on 15.03.2012. Against the order of remand, defendant has come in SAO No.39 of 2012 in which at the time of issuance of notice of motion, following order was passed on 25.07.2012:-

“C. M. No. 18049-C-II of 2012 :

For reasons mentioned in the application, which is accompanied by affidavit, delay of 43 days in re-filing the appeal is condoned. The application stands allowed accordingly.

Main Appeal :

Counsel for the appellant contends that respondent no.1-plaintiff was not entitled to lead additional evidence in first appeal regarding purchase of stamp paper for the impugned agreement because the said evidence was already in the knowledge of the plaintiff. It is also contended that defendant no.1-appellant does not press his plea of bar of res judicata, for which additional issue no.4-A has been framed by the lower appellate court.

Notice of motion to respondent no.1-plaintiff only for 09.10.2012.

Respondent no.1 be also served through his counsel in the lower court namely Mr. N. K. Aggarwal, Advocate, Jalandhar.

Meanwhile, passing of final judgment by the trial court shall remain stayed.”

[6] Thereafter the matter was again taken up by this Court on 08.05.2015. Interim order was modified in the following manner:-

“Vide interim order dated 25.07.2012 it was ordered that final judgment will not be passed by the trial Court.

Counsel for the parties, on asking of the Court, inform that the evidence has already been led before the trial Court.

In view of said circumstances, the interim order is modified to the effect that trial Court shall prepare a report on the basis of additional evidence on issue No.3 and issue No.4-A. The said report will be sent to the appellate

authority by the next date of hearing.

Adjourned to 24.09.2015.

A photocopy of this order be placed on the file of other connected case.”

[7] After the remand, the trial Court proceeded with the case. Stamp vendor was away to USA. The plaintiff got the clue that the register of stamp vendor is available with one Madhukar Sharma and he sought to examine Madhukar Sharma in that context. Madhukar Sharma brought the original register of stamp vendor. Petitioner of CR No.1908 of 2013, filed the revision petition against the order dated 28.02.2013 passed by Civil Judge (Junior Division) Jalandhar that Madhukar Sharma was not the person in whose custody the register of stamp vendor was lying, rather Dharampal Verma the original stamp vendor has come back from USA. That is how the CR No.1908 of 2013 came to be filed and got attached with SAO No.39 of 2012.

[8] During the course of arguments, it has come to fore that after the remand, evidence has been led before the trial Court in entirety and the case is matured for arguments. The only objection of learned counsel for the petitioner in Civil Revision is that Madhukar Sharma was not the authorized person to produce the said register before the trial Court. On pointed question it could not be suggested that whether any prejudice has been caused to the petitioner on account of production of stamp vendor register by Madhukar Sharma. Moreover, there is no allegation of any tampering of register of stamp vendor. Only a technical ground has been raised that without there being any authority or leave granted by the trial Court, Madhukar Sharma could not have appeared and produce the register in question before the Court.

[9] The trial Court adjourned the case on number of occasions for production of register of the stamp vendor but the same could not be produced as the stamp vendor was living in USA. It is only thereafter, plaintiff could get the clue in respect of register in question and thereafter the same was produced in Court.

[10] In considered opinion of this Court, no prejudice is going to be caused to the defendant in such production in the absence of any allegation of tampering or otherwise.

[11] In the appeal since the appellant has himself left the issue No.4-A on 08.05.2015, therefore, controversy was found to the extent of production of register of stamp vendor which was duly produced. In the absence of any plea of tampering or otherwise, this Court feels that the exercise is only intended to delay the disposal of suit.

[12] In view of aforesaid, no interference is called for in SAO as well as in CR. Accordingly, both are dismissed.

However, it will be open to the parties to argue before the trial Court. Nothing expressed hereinabove should be construed to be an opinion on merits of the case.

Dismissed.

(RAJ MOHAN SINGH)
JUDGE

December 07, 2015

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