

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No. 4397 of 2013 (O&M)

Date of Decision: February 16, 2015

Gurmit Singh

....Appellant..

Versus

Santokh Singh and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. H.S. Dhindsa, Advocate,
for the appellant.

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?

JASPAL SINGH, J.

CM No. 11812-C-2013

For the reasons mentioned in the application, delay of 80 days in re-filing the appeal is condoned.

CM stands disposed of.

CM No. 11813-C-2013

This is an application under Order 22 read with Section 3 & 11 read with Section 151 of the Code of Civil Procedure for impleading the legal representatives of deceased- Jasmail Kaur, who has expired, leaving behind her legal representatives as mentioned in para 3 of the application.

In view of the contents of the application, which is duly supported with an affidavit of Gurmeet Singh s/o L. Gurdev Singh, the same stands allowed and the legal representatives of deceased- Jasmail Kaur, mentioned in para 3 of the application are allowed to be impleaded as legal representatives of deceased for the purpose of disposal of the instant appeal.

Amended memo of parties is taken on record subject to all just exceptions.

C.M. stands disposed of.

CM No.11814-C-2013

Prayer in this application for making good deficiency of court fees of Rs.10,184/-

Present application is dismissed being infructuous as court fee has already been attached.

CM No. 11815-C-2013

Prayer in this application is for exemption from filing certified copies of judgment and decree passed by Civil Judge (Junior Division), Ludhiana.

Allowed as prayed for.

Main case

Unsuccessful appellant-plaintiff has preferred instant appeal feeling dissatisfied from judgment dated January 28, 2013 passed by Additional District Judge, Ludhiana vide which judgment and decree dated August 30, 2011 passed by Id. Civil Judge (Junior

Division), Ludhiana has been affirmed whereby appellant-plaintiff sought following relief:-

“Suit for declaration to the effect that the plaintiff and defendant No.1 are the owners and in possession of the land in equal shares as per the latest Will executed by Sh. Gurdev Singh father of them during his life time on 27.01.1998 and further declaration that the exchange of ownership deed in a shape of sale deed dated 24.11.2005 and registered on 28.11.2005 by late Sh. Gurdev Singh in favour of defendant No.1 is illegal, unlawful and uncalled for nonestone having no effect on the legal rights, title of plaintiff in any manner whatsoever for the land as comprised in khewat No. 318, 336 and Khatauni No.369 & 387, Khasra Nos. Rect No. 13/6 (8-0), 15 (7-11), 16/1(4-4), 16/3 (0-3), 25/2 (1-6), 343 (0-4), 292 (0-13) and 295 (1-13) as per the copy of jamabandi for the year 2000-2001 situated in the revenue estate of village Mukandpur, HB No. 322, Tehsil and District Ludhiana and further more declaration that the mutation No. 2778 of the above said exchange ownership deed from Gurdev Singh in favour of defendant No.1 is also an illegal, unlawful and having no effect on the legal rights of plaintiff as such all the above said activities in respect of above said exchange ownership deed dated 24.12.2005 registered on 28.11.2005 is an act of fraud, misrepresentation and fabricated one with an illegal intention to defraud with the legal right of plaintiff by the defendant No.1 and his son

Harvinder Singh and Harjinder Singh son of Jarnail Singh of village Mukandpur, Tehsil and District Ludhiana. And the same is coparcenary property of the plaintiff and plaintiff has birth right in it being male coparcener. And further plaintiff was having no right, title to alienate the same in favour of defendant No.1 which is illegal and unlawful.

AND

Suit for permanent injunction restraining defendant No.1 from transferring, alienating or exchanging creating charge over the land in dispute in any manner whatsoever and also restraining defendant No.1 from dispossessing the plaintiff from 1/2 share of the land illegally, forcibly or in any manner whatsoever. The land fully detailed and described as above and as per copy of jamabandi for the year 2000-2001 situated in the revenue estate of village Mukandpur, HB No. 322, Tehsil and District Ludhiana”

2. At the very outset, it would be pertinent to mention that suit of appellant-plaintiff was dismissed while dealing with provisions contained under Order 17 Rule 3 CPC as appellant-plaintiff has miserably failed to adduce evidence either oral or documentary, in support of pleadings set-up in plaint. Even he did not opt to appear in the witness-box.

3. The only contention of learned counsel for appellant-plaintiff is that appellant-plaintiff has not been afforded an ample opportunity to conclude and adduce evidence and dealing with provisions under Order 17 Rule 3 of the CPC is not legally and

factually justified. In fact, appellant-plaintiff was not aware about the order whereby last opportunity was granted to him to adduce his entire evidence. Moreover, trial court after closing evidence of appellant-plaintiff by order, fixed the case of defendant, which was adjourned number of times. Meaning thereby, that case was not decided forthwith as has been provided under Order 17 Rule 3 CPC. In such a situation, another opportunity was required to be given to appellant-plaintiff to produce his witnesses on next date. The very purpose of the performance laid down in Order 17 Rule 3 CPC stood defeated as case was not decided forthwith. In support of this contention, learned counsel for appellant-plaintiff has placed reliance upon pronouncement of this Court captioned as ***“M/s Kalpataru Synthetics and Fibres (P) Ltd. vs. Sri Seetha Venkatesh Mills Ltd.”***, 1999 (2) RCR (Civil)142.

4. While concluding his arguments, it has been submitted by learned counsel for appellant-plaintiff that it would be just and expedient to provide an opportunity to appellant-plaintiff to produce his evidence in support of his case and then to decide the suit afresh.

5. This Court has given a deep thought to the aforesaid submission made by learned counsel for appellant-plaintiff but finds the same to be of no legal and factual substance.

6. A glance at the impugned judgments and decrees transpires that since appellant-plaintiff failed to adduce evidence on July 18, 2011, despite the fact that last and final opportunity was

afforded to him, his evidence was closed by order of Id. trial court. However, suit was finally disposed of by trial court on August 30, 2011, but to the utter surprise, appellant-plaintiff did not prefer to challenge order dated July 18, 2011 whereby his evidence was closed, by way of revision. Meaning thereby that he accepted the correctness and legality thereof. Not only this, even appellant-plaintiff did not make even a slightest effort to move an application for adducing additional evidence under 41 Rule 27 CPC either before lower appellate court or before this Court while filing instant appeal. No doubt, order dated July 18, 2011 could also be challenged during arguments in instant appeal by learned counsel for appellant-plaintiff but there is nothing on record to suggest as to what evidence appellant-plaintiff could produce or intended to examine before Id. trial court. There is no quarrel in the observation made in case “**M/s Kalpataru Synthetics and Fibres (P) Ltd's.** case (supra) but in the facts and circumstances of the case in hand, there is nothing on record to suggest that any prejudice has been caused to appellant-plaintiff by not deciding the suit by Id. trial court on the date, evidence of appellant-plaintiff was closed i.e. July 18, 2011. In fact, there is no question of law involved in the present Regular Second Appeal what to say of any substantial question of law. Accordingly, this Court does not find any infirmity, illegality or perversity in the impugned judgments and decrees passed by the trial court, which has been

affirmed by lower appellate court vide judgment and decree dated January 28, 2013.

7. As an upshot of the aforesaid discussion, appeal being devoid of merit is dismissed.

8. No order as to costs.

February 16, 2015
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(JASPAL SINGH)
JUDGE