

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.1188 of 1988 (O&M)
Date of Decision: November 07, 2016.**

Mahant Rajgir (since deceased) through LRs

.....APPELLANT(s).

VERSUS

Shakti Kumar and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Parvinder Singh, Advocate
for the appellant (s).

Mr. Manjul Sud, Advocate
for the respondents No.1 and 2.

SURINDER GUPTA, J.

Appellant-plaintiff filed suit seeking the relief as follows:-

“Suit for permanent injunction restraining the defendants from dispossessing the plaintiff Mahant of Mandir Rajni Devi from Mandir Rajni Devi and Sarai attached therewith bounded as:-

East : Open land of Mandir Rajni Devi,
West : Open land of Mandir Rajni Devi,
North : Plot of Mandir Rajni Devi,
South : Land of Mandir Rajni Devi,
situated in village Rajni Devi, Tehsil and District
Hoshiarpur, shown red in the site plan attached.”

2. Plaintiff Rajgir claimed to be Mahant of Mandir Rajni Devi.

Defendants No.3 to 6 admitted the claim of plaintiff, while defendants No.1

and 2 contested the same inter-alia pleading that defendant No.2 Pyare Lal Puri has nothing to do with Mandir Rajni Devi and has been unnecessarily impleaded as party in this case. They denied possession of plaintiff over Mandir Rajni Devi and also contested and controverted the other pleas raised by the plaintiff.

3. Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the plaintiff is in possession of the Mandir known as Rajni Devi and Sarai attached to same? OPP
- (2) Whether defendant No.2 is an unnecessary party? OPD
- (3) Whether defendant No.1 is duly appointed Mahant of Mandir in dispute and is in possession of the same? OPD
- (4) Whether the plaintiff is entitled to the injunction prayed for ?OPD
- (4-A) Whether the plaintiff is duly appointed Mahant of Mandir Rajni? OPD
- (4-B) What is the effect of order dated 14.5.78 of SDM, Hoshiarpur? OPD
- (4-C) Whether the suit is barred U/S 23 Rule 1 C.P.C.? OPD
- (4-D) Whether the suit is not maintainable under the law? OPD
- (4-E) What is the effect of the judgment and decree dated 3.8.79 on this suit? OPD
- (5) Relief.

4. Learned Additional Senior Sub Judge, Hoshiarpur recorded the findings on issue No.1, 2, 4, 4-C and 4-D in favour of plaintiff. No findings on issue No.4-B and 4-E were recorded as these were not pressed, while

finding on issue No.3 and 4-A were recorded against plaintiff. It was held that appoint of Rajgir as Mahant of Mandir Rajni Devi was not proved, rather, appointment of defendant No.1 Shaktigir as Mahant of the temple was held as proved. The suit of the plaintiff was decreed in following terms:-

“28. In view of my findings in respect of Issue No.1 that the plaintiff is in possession of Mandir Rajni Devi and Sarai in dispute, the suit is decreed for permanent injunction in favour of the plaintiff that the defendants are restrained from dispossessing the plaintiff from the possession of the suit property forcibly and without due course of law.”

5. Not satisfied, defendants No.1 and 2 filed appeal against judgment and decree passed in favour of plaintiff while plaintiff also filed appeal challenging findings on issue No.3 and 4-A against him. Learned Additional District Judge, Hoshiarpur dismissed both the appeals.

6. Against the judgment of learned Additional District Judge, plaintiff has come up with this regular second appeal.

7. The first question which arise for consideration is as to whether this appeal is maintainable? In order to find answer, it will be relevant to refer to the observations in case of *Mukhtiar Singh and another Vs. Nishan Singh and others 2006(3) PLR 788*, wherein under similar circumstances, a Co-ordinate Bench of this Court while making reference to the view taken by the Apex Court observed as follows:-

“9. Without going into any factual gamut of the case, learned counsel for the appellants has confined his contention on a legal issue, namely, could an appeal be filed by the defendants merely against a finding returned

against them by the trial court even though the suit was finally dismissed. Referring to section 96 Civil Procedure Code, it is contended by learned counsel for the appellants that an appeal lies from a "decree" only and no decree having been passed against respondents No. 1 and 2 by the trial court, their appeal against some of the findings was not maintainable. He has also referred to Order 41 Rule 22 Civil Procedure Code to contend that the conclusions drawn by the civil court while deciding issues No. 3, 4 and 6 too could be assailed by respondents No. 1 and 2 only if the plaintiffs had preferred any appeal against the decree passed against them. In support of his contention, learned counsel has relied upon two judgments of the Hon'ble Supreme Court in :- (i) ***Smt. Ganga Bai v. Vijay Kumar & Ors.***, AIR 1974 Supreme Court 1126; and (ii) ***Banarsi & Ors. v. Ram Phal*** [2003\(2\) RCR\(Civil\) 248 \(SC\) : JT 2003\(5\) SC 224.](#)

In ***Smt. Ganga Bai's case (supra)***, which was decided prior to the 1976 amendment in the Civil Procedure Code, their Lordships of the Supreme Court held as follows :-

"17. These provisions show that under the Civil Procedure Code, an appeal lies only as against a decree or as against an order passed under rules from which an appeal is expressly allowed by Order 43 Rule 1. No appeal can lie against a mere finding for the simple reason that the code does not provide for any such appeal. It must follow that First Appeal No. 72 of 1959 filed by defendants 2 and 3 was not maintainable as it was directed against a mere finding recorded by the trial Court."

In ***Banarsi's case (supra)***, the Apex Court after observing that, "appeal and cross-objection - both are filed against decree and not against judgment *and certainly not against any finding recorded in a judgment*", further observed that, "CPC amendment of 1976 has not materially or substantially altered the law except for a marginal difference". It further concluded that :-

"8. Sections 96 and 100 of the Civil Procedure Code make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal (See ***Phoolchand & Anr. v. Gopal Lal, Smt. Jatan Kanwar Golcha v. M/s Golcha Properties (P) Ltd and Smt. Ganga Bai v. Vijay Kumar & Ors.***) No appeal lies against a mere finding. It is significant to note that both sections 96 and 100 of the Civil Procedure Code provide for an appeal against decree and not against judgment". (emphasis applied)

It, thus, stands crystalized that where the trial court dismisses a suit and no decree, partly or otherwise, prejudicial to the interest of the defendants is passed, no appeal can be filed by the defendants even against the findings recorded against them.

The impugned judgment and decree passed by the first appellate court at the instance of some of the defendants, thus, cannot sustain as the said appeal was also directed against certain findings only and not against a "judgment" or "decree". Consequently, the appeal is allowed, the impugned judgment and decree dated 27.2.2004 passed by the learned Additional District Judge, Amritsar is set aside. This, however, shall not preclude respondent No. 1 to have any other recourse in law, if so available."

8. In the aforesaid case, the trial Court had dismissed the suit but had recorded findings on issues No.3, 4 and 6 against some of the defendants, who preferred appeal, which was accepted by the first Appellate Court. In this case also, the suit filed by the appellant seeking the relief of permanent injunction was decreed and findings on issue No.3 and 4-A were recorded against the plaintiff. Applying the ratio of law in the judgments of

the Apex Court in *Smt. Ganga Bai v. Vijay Kumar & Ors. (supra)* and *Banarsi & Ors. v. Ram Phal(supra)*, this appeal is also held as not maintainable and as such, is dismissed.

9. However, this shall not preclude the appellant to take any other recourse, available under law and to avail legal remedies and plea available to him, in appropriate proceedings.

November 07, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>