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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2418-2003 (O&M)
Date of decision : 25.05.2016

Gopal

... Appellant

Versus

Krishana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Kumar, Advocate
for the appellant.

Mr. Vikram Singh, Advocate
for the respondent(s).

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)

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking declaration to the effect that the order dated 30.10.1996 (Ex.P-1) passed by the Consolidation Officer, was in defiance of the directions contained in the order dated 14.06.1996 (Ex.P-2) passed by the Director, Rehabilitation Department. Both the Courts below have non-suited the appellant-plaintiff on the ground that the as per the Section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation), Act, 1948 (hereinafter called 'the 1948 Act'), the Civil Court did not have jurisdiction. Moreover, no opportunities of hearing had been given.

Mr. Vikas Kumar, learned counsel appearing on behalf of the appellant-plaintiff submits that once, the order is without jurisdiction, it is a

settled law that even the statute provides the alternative remedy to knock the door of the Civil Court by invoking the provisions of Section 9 of the CPC. The evidence brought on record would reveal that the Director had given the opportunities to the parties to appear before the Consolidation Officer and directed him to provide the passage after spot inspection and hearing. The Kanungo was appointed to do the spot inspection, which was done 20.09.1996, thereafter passed the order on 30.10.1996. Zimini orders do not reveal that at any point of time, the appellant-plaintiff was ever heard, thus, there was a defiance of directions contained in the order dated 14.06.1996. He further submits that at the time of the admission of the appeal, there was a order of status quo, for, there is already constructed house. Even the Courts below have erroneously not gone into this aspect. At the best, the Courts below could set aside the order by giving an opportunity to the appellant-plaintiff to appear before the Consolidation Officer. He further submits that even the application at the instance of the defendant(s) before the Director, was not maintainable as the consolidation scheme had already been sanctioned and the remedy, if any, was to approach the Civil Court, thus, urges this Court to formulate the following substantial questions of law:

- 1) Whether the judgment and decree of the Courts below suffers from illegality and perversity in not examining the pith and substance of the order dated 14.06.1996 (Ex.P-2).
- 2) Whether the Civil Court would have a jurisdiction to try and entertain the suit, when the order under challenge is

without jurisdiction, much less, lacking jurisdiction.

Mr. Vikram Singh, learned counsel appearing on behalf of the respondent(s)-defendant(s) submits that the passage of the defendant(s) was taken in view of the surplus proceedings and therefore, were left with no passage. It is, in these circumstances, the application was moved and the Director, after hearing both the parties passed the order dated 14.06.1996 (Ex.P-2). Even the spot inspection was done on 20.09.1996 in the presence of the appellant-plaintiff. It is too late in a day for the appellant-plaintiff to urge that he was not given opportunity to appear before the Consolidation Officer, while passing of the order dated 30.10.1996, under challenge. Moreover, the plaint is liable to be dismissed for having not challenged the order dated 14.06.1996, thus, urges this Court for affirming the findings, under challenge.

Mr. Vikas Kumar, in rebuttal, submits that the plaintiff was not aggrieved of the order dated 14.06.1996 and then was not challenged.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a merit in the substance of Mr. Vikas Kumar, for, the order dated 14.06.1996 (Ex.P-2) was passed by the Director, whereby the case has been remanded back to the Consolidation Officer with a direction for inspection of the spot and affording opportunity of hearing to parties and to provide shortest possible passage.

However, the order dated 30.10.1996 (Ex.P-1) does not reveal the compliance of the directions except spot inspection. I would not delve upon the facts that whether the passage provided is as per the order under challenge or there is exist constructed house or not. The same shall be

within the domain of the Consolidation Officer, in case, he gives opportunities of hearing to both the parties and after taking into consideration the constructed portion, if any and provides the shortest possible passage. The rigours of Section 44 of the 1948 Act, would not come in the way of the appellant-plaintiff as the order is in defiance of the directions contained in the order 14.06.1996 (Ex.P-2).

The matter regarding the jurisdiction of the Court, in view of the alternative remedy provided by the statute, has been debated upon many occasions and it has been held that where the order is without jurisdiction, the aggrieved party can always seek its redressal by knocking the door of the Civil Court. The instant case is of such kind, therefore, the findings rendered by the Courts below regarding applicability of Section 44 of the 1948 Act would not be applicable.

For the foregoing reasons, the judgment and decree of both the Courts below are not sustainable and the same are hereby set aside. The substantial questions of law as noticed above are answered in favour of the appellant-plaintiff and against the respondent(s)-defendant(s).

However, this order of mine shall not preclude the Authority i.e. Consolidation Officer to comply with the directions contained in the order dated 14.06.1996 (Ex.P-2) in letter and spirit and thereafter, pass an order in accordance with law.

Resultantly, the appeal stands allowed.

25.05.2016
yogesh

(AMIT RAWAL)
JUDGE