

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2531 of 1989 (O&M)
Date of Decision: 09.02.2016

Inder Singh

.....Appellant

Vs

Karam Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Deepak Agnihotri, Advocate
for the appellant.

Mr. Maninder Arora, Advocate
for the respondents.

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?*

RAJ MOHAN SINGH, J.

[1]. First of all it has to be seen whether Regular Second Appeal is maintainable from a decree involving subject matter of the original suit not exceeding Rs.25,000/-?

[2]. The Code of Civil Procedure (Amendment) Act 1999 came into being on 01.07.2002, whereby Section 102 CPC was substituted with new Section which reads as under:-

"Section 102 CPC: No second appeal in

certain cases:-

No second appeal shall lie from any decree, when the amount or value of the subject matter of the original suit does not exceed Rs.25,000/-”.

[3]. Repeal and savings as contained in Chapter IV of the aforesaid amendment Act provides in terms of Section 32(2)(h) that the provisions of the Section 102 of the Principal Act, as substituted by Section 11 of the amending Act shall not apply to or affect any appeal which had been admitted before the commencement of Section 11 and every such appeal shall be disposed of, as if, Section 11 had not come into force.

[4]. The aforesaid properties of the amending Act have been reiterated in **Shiv Shakti Coop. Housing Society, Nagpur vs. M/s Swaraj Developers & Ors., ISJ (Banking) 450** and **Chandler Bhan (Deceased) through LRs vs. Gobind Ram, 2004(1) ISJ (Banking) 228**, wherein the aforesaid amending provisions have been explained to have effect prospectively, but amending provision as no retrospective effect on the pending appeals in view of above decision. Therefore this issue is no more *res integra* and the appeal has to be decided on it own merits.

[5]. Defendant is in second appeal against the judgment and decree dated 08.09.1989 passed by Additional District

Judge, Patiala whereby judgment and decree dated 12.03.1987 passed by Sub-Judge IInd Class, Rajpura was set aside and the suit of the plaintiffs was decreed for recovery of Rs.4200/- with costs and interest @ 12% per annum from the date of decree till final realisation of the amount.

[6]. Plaintiffs filed suit for recovery of Rs.4200/- on the ground that they were owners in possession of land measuring 26 *Kanals* 16 *Marlas* comprised in *Khasra* Nos.15/2 (1-16), 12 (7-2), 13 (8-0), 18 (4-17), 11/8 (3-16) and 11/2 (1-15) in Rectangle No.31 and they had also 2/5th share in *Khasra* No.32/26 (0-11).

[7]. Plaintiffs alleged that in earlier civil suit No.172 dated 03.06.1975 decided on 06.09.1975, a compromise was entered into between the same parties and the same was filed in the said suit. On the basis of that compromise, civil Court decided the controversy vide judgment and decree dated 06.09.1975 and the plaintiffs were held owner in possession of the suit land.

[8]. Plaintiffs further alleged that out of that land, land measuring 1 *Kanal* 16 *Marlas* comprised in *Khasra* No.31/15/2 was acquired by the Government of Punjab for Satluj Yamuna Link Canal. Though the plaintiffs were declared to be owner by dint of civil Court decree in respect of 1 *Kanal* 16 *Marlas* of land, but defendant got the compensation of Rs.4200/- from Land

Acquisition Officer in respect of that land. Hence the suit was filed for recovery of said amount along with interest.

[9]. Defendant contested the case on all counts. He denied having received any compensation in respect of the land belonging to the plaintiffs. Defendant contended that he had received the amount of compensation in respect of land owned by him.

[10]. After filing replication by the plaintiffs, both the parties went to trial on the following issues:-

- “1. Whether the compromise in the suit for permanent injunction was arrived between the parties on 6.9.1975 in the Court? If so its effect? OPP.*
- 2. Whether the land bearing Khasra no.31/15/2 was acquired by Govt. of Punjab for SYL as alleged? OPP*
- 3. Whether the defendant received the sum of Rs.4200/- from Land Acquisition Officer as alleged? OPP*
- 4. Whether the plaintiff is entitled to recover the amount of Rs.4200/-? OPP.*
- 5. Whether there is no cause of action in favour of the plaintiff? OPP*
- 6. Relief.”*

[11]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[12]. Trial Court dismissed the suit after discussing the relevant issues vide judgment and decree dated 12.03.1987. Plaintiffs feeling aggrieved against the judgment and decree rendered by the trial Court filed appeal. The lower Appellate Court vide judgment and decree dated 08.09.1989 accepted the appeal after allowing the application for additional evidence.

[13]. I have heard learned counsel for both the parties and have perused the record.

[14]. Though at the time of filing of the appeal no substantial question of law was framed, however at the time of admission of the appeal, it was observed by this Court that non-consideration of evidence by the first Appellate Court would be a question to be determined by this Court at this stage after admission of the appeal.

[15]. Trial Court has decided the suit on the premise that the plaintiffs have relied upon decision of earlier suit decided on 06.09.1975 Ex.P1 and Ex.P-2 on record. The said decree was passed on the basis of compromise and the said compromise was not placed on record, therefore, the trial Court decided issue No.1 against the plaintiffs. Under issue No.2, trial Court held that in the absence of any material, it could not have been held that *Khasra* No.31/15/2 was acquired by the Government of Punjab for Satluj Yamuna Link Canal and, therefore issue No.2

was also decided against the plaintiffs. Similarly the factum of payment of Rs.4200/- in favour of defendant was also negated for want of evidence and issues No.3 and 4 were accordingly decided against the plaintiffs. Defendant did not lead any evidence in respect of issues No.5 and 6 and, therefore, these issues were held not proved and were decided against the defendant. Consequently, the suit was dismissed by the trial Court.

[16]. Lower Appellate Court reversed the findings on the ground that the judgment and decree passed in previous suit were already on record as Ex.P-1 and Ex.P-2 and the judgment and decree based on compromise decree was not required to be registered. The judgment and decree was duly exhibited and the trial Court was not justified in ignoring the said judgment and decree.

[17]. Even application for additional evidence was filed at the appellate stage for brining mutation on record. The said application was allowed and document Ex.AX was taken on record. The mutation of the land in dispute comprised in *Khasra* No.31/15/2 measuring 1 *Kanals* 16 *Marlas* clearly demonstrated that the same was sanctioned in favour of Karam Singh plaintiff No.1 and, therefore, the identity of the land was not in issue any more.

[18]. The argument raised by learned counsel for the appellant that the statement of the official witness to the effect that defendant got the compensation of his own land cannot be appreciated in the light of link evidence established on record by way of additional evidence at appellate stage which was further supplemented by the factum of payment vide Ex.P-1/B received by the defendant in respect of Khasra No.31/15/2 measuring 1 *Kanal* 16 *Marlas*. The identity of the land was established with due reference to actual payment made to the defendant.

[18]. The second question which was required to be proved was whether the amount meant for *Khasra* No.31/15/2 (1-16) was in fact paid to the defendant or not?

Ex.P-1/B pointed out that the amount of Rs.4657.50 paise was recovered by Inder Singh (defendant) as compensation in respect of land comprised in *Khasra* No.31/15/2 measuring 1 *Kanal* 16 *Marlas*. Sanctioning of mutation Ex.AX further co-related the land with the amount of compensation which was received by the defendant. From this evidence on record it can not be held that there was no evidence of connectivity of *Khasra* No.31/5/2 (1-16) with the amount so received by the defendant under the alleged claim of land belonging to him only.

[19]. In the light of aforesaid evidence it can be safely held

that the lower Appellate Court, in considered opinion of this Court has come to the right conclusion thereby decreeing the suit for recovery of Rs.4200/- with interest.

[20]. In view of aforesaid discussion, I am of the considered view that the appeal is totally bereft of merits and the same is accordingly dismissed.

February 09, 2016

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**(RAJ MOHAN SINGH)
JUDGE**