

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

RSA No.332 of 2010 (O&M)

Date of decision : 24.08.2016

Cooperative Marketing-cum-Processing Society Dhuri

...Appellant

Versus

Sewa and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

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

Mr. Nandan Jindal, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

Mr. Vikas Kuthiala, learned counsel appearing on behalf of appellant-plaintiff submits that suit seeking possession of land measuring 2094 square yards out of 11806 square yards i.e. 11 bighas 14 biswas comprised in khasra number as mentioned in the prayer clause of suit was dismissed by the trial Court on the premise that it was hit by Doctrine Akin to res judicata for the appellant-society had filed a counter claim in civil suit No.51 of 1985 and the same was dismissed with a liberty to file a fresh suit. Society had filed fresh present suit i.e. 151 of 2000, therefore, Courts below ought not to have dismissed the same. The aforementioned finding was

assailed before the lower Appellate Court but the same has also met with the same fate with further addition that suit was not accompanied by a Resolution Ex.PW6/A authorizing the plaintiff to institute a suit. In support of his contention, he has relied upon judgment rendered by Hon'ble Supreme Court in *AIR 1998 (SC) 271 Punjab State Cooperative Bank Ltd. Vs. Milkha Singh*, to contend that in case as per provision of Section 23 of Punjab Cooperative Societies Act, 1961, the authority is not given to the concerned officer, the same can be rectified at any stage. Similar is the judgment rendered by Hon'ble Supreme Court in *United Bank of India Vs. Naresh Kumar and others, 1997 AIR (SC) 3*, whereby it has been held that defect is rectifiable as per provision of Order 29 of the Code of Civil Procedure and thus urges this Court for setting aside of the judgment of the Courts below and remand the matter back to the lower Appellate Court as the appellant has been deprived to the right of first appeal before the Court of fact and law by framing following substantial questions of law:-

1. Whether the resolution not authorizing the person to file suit and only enabling him to recover, can the suit be dismissed?
2. Whether the suit can be dismissed on the ground of res judicata or not?

Mr. Nandan Jindal, learned counsel appearing on behalf of respondents-defendants submits that present suit i.e. Civil Suit No.151 is not the second suit. In fact is the third suit whereas second suit is 76 of 1991.

He submits that in the injunction suit, issue of ownership was also drawn and Court had framed the issue and decided the same against the

plaintiff on the ground that no document was placed on record. He further submits that aforementioned copy of the suit Ex.D2 has been brought on record. The trial Court was confused of the matter vis-a-vis second suit and third suit. He further submits that in the previous suit i.e. Civil Suit No.51 of 1985, the appellants have failed to prove the identity of the property and drawn the attention of this Court to the findings rendered by the trial Court and urges this Court for affirmation of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that in the previous suit, no doubt trial Court had given opinion with regard to the identity of the property and ownership but the lower Appellate Court held that Society was allotted the plot vide allotment letter and had also become owner of the property. Even the copy of the possession letter has been proved on record as Ex.D10. Be that as it may but the fact remains that in the present case, the trial Court had confused the matter while dismissing the suit being barred by res judicata. However, in the findings rendered by the trial Court in the previous suit, permission was granted to plaintiff to file fresh suit. The findings rendered in Civil Suit No.51 of 1985, reads thus:-

“It is however, open to the defendant society to file a suit for declaration and to seek possession as a consequence thereof or otherwise to file a separate suit for possession is so permissible by producing the requisite record to link the site in dispute congenitally with the aforesaid 11806 sq. yard area in question with these observations, this issue is decided against the defendant society.”

This aspect has not been noticed by the lower Appellate Court

and has only gone into the realm of competency of Manager to file the suit.

In my view, it is a fit case for remand.

Accordingly, judgment and decree of the lower Appellate Court is set aside. Matter is remitted back to the lower Appellate Court to decide the appeal afresh preferably as expeditiously as possible within a period of six months from the date of receipt of certified copy of this order.

Defendants shall be at liberty to take all possible pleas before the lower Appellate Court in accordance with law.

Parties are directed to appear before the Lower Appellate Court on 20.09.2016.

Original record be sent back.

Accordingly, present Regular Second Appeal is disposed of.

24.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- Yes

Whether reportable:- No