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RSA No.2175 of 2012 (O&M)
Date of decision:02.12.2016

Smadh Baba Daulat Giri and another ... Respondents

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Present:- Mr. V.K.Jain, Senior Advocate with
Mr. Ravi Kadian, Advocate and
Ms. Mehak Sethi, Advocate
for the appellants (in RSA No.2175 of 2012).

Mr. Vikas Singh, Advocate
for the appellants (in RSA Nos.3854 and 4483 of 2013).

Mr. S.K.Garg Narwana, Senior Advocate with
Mr. Naveen Gupta, Advocate
for the respondents (in RSA No.3854 of 2013).

This order of mine shall dispose of three Regular Second Appeals bearing Nos.2175 of 2012, 3854 and 4483 of 2013.

Before advertng to the facts and as well as rival submissions of

learned counsel representing the parties to the lis, in my view, following questions arise for adjudication of the aforementioned Regular Second Appeals:-

“1. Whether the aforementioned Regular Second Appeals are covered by a decision dated 07.07.2015 rendered by a Co-ordinate Bench of this Court in RSA Nos.126 of 2013 and 3345 of 2011 or not?”

2. Whether the Civil Court had jurisdiction to try and entertain the suit for declaration and possession, in view of the provisions of Section 9 of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as “1953 Act”)?”

3. Whether on expiry of the period of lease, the status of the appellants/lessees would be of tenants holding over or not?”

Mr. V.K.Jain, learned Senior Counsel assisted by Mr. Ravi Kadian, Advocate and Mr. Vikas Singh, Advocate for the appellant-defendants submitted that the judgment rendered by this Court would not be applicable to the facts and circumstances of the present appeals, for, both the Courts below, particularly the Lower Appellate Court being the last Court of facts and law abdicated in not referring to the findings issue-wise, much less by determining the points of consideration/determination as per the provisions of Order 41 Rule 31 of Code of Civil Procedure (hereinafter referred to as “CPC”). A specific objection qua maintainability of the suit, much less jurisdiction of the Civil Court was taken in the written statement and issue regarding jurisdiction in one suit was also framed but there is no adjudication. Though there is a reference to the submissions made in this

regard but in the penultimate paragraph/decision, there is no adjudication. They further submitted that the suit primarily was based upon two reliefs, declaration and consequential relief of possession on the premise that Mahant Santosh Giri, predecessor-in-interest of the respondent-plaintiffs, was not competent to execute the lease deed for a period of 30 years in favour of different tenants in respect of different pieces of land measuring, i.e., 21 kanals 8 marlas in civil suit No.359 of 2003 titled as Samadh Baba Daulat Giri and another vs. Mansa (since deceased) through LRs (RSA No.2175 of 2012); 62 kanals 16 marlas in civil suit No.RBT-95 of 2010 titled as Samadh Baba Daulat Giri Dhundrehri and another vs. Chanda and others (RSA No.4483 of 2013) and 116 kanals 12 marlas in civil suit No.RBT-96 of 2010 titled as Samadh Baba Daulat Giri Dhundrehri and another vs. Chanda and others (RSA No.3854 of 2013).

Besides the aforementioned objections, issue qua limitation regarding relief of declaration was also framed but the Court below had held that since during the pendency of the suit in one of the cases, lease period had expired and therefore, the suit for possession as per Article 96 of the Limitation Act was maintainable as the limitation is 12 years. They further submitted that as per the ratio decidendi culled out by this Court in the aforementioned judgment, similar objection qua maintainability of the suit was raised but the same was rebutted/negated by this Court as the counsel representing the lessees, conceded that no such objection qua maintainability of the suit, in view of the provisions of 1953 Act, was raised. It is, thus, in this aspect of the matter, the learned Single Judge of this Court, by relying upon doctrine of waiver *vis-a-vis* the statutory

provisions and directory provisions dismissed the appeal. However, on going through the judgment rendered by the Lower Appellate Court, there is no adjudication qua the aforementioned objection despite having raised.

In support of their contention, relied upon the judgment rendered by a Co-ordinate Bench of this Court in **Ram Lal vs. Darshan Lal and others 2008 (1) LAR 454** and thus, urged this Court for setting aside the findings under challenge.

Per contra, Mr. S.K.Garg Narwana, learned Senior Counsel assisted by Mr. Naveen Gupta, Advocate for the respondents (in RSA No.3854 of 2013) submitted that the appellant-defendants cannot approbate or reprobate in the same breath, in essence, the onus of proving legal necessity *vis-a-vis* lease deed was upon alienee as per the judgment rendered by this Court in **Iqbal Singh vs. Santokh Singh and another;** AIR 1984 P&H 366. Having failed to prove the same, they cannot take up a plea for the first time in this Court as plea qua jurisdiction of the Civil Court, much less, maintainability of the suit was taken in a most casual and a routine manner. In fact, they did not press for adjudication of the aforementioned issues nor led any evidence and therefore, the judgment rendered by a Co-ordinate Bench of this Court in RSA Nos.126 of 2013 and 3345 of 2011 is squarely applicable to the facts and circumstances of the present case and the appeals are liable to be dismissed. He further submitted that the lease deed was for a paltry amount, i.e., ₹123/-, ₹1043/- and ₹400/- per annum, thus, urged this Court for affirming the findings under challenge. The factum of raising plea qua jurisdiction and framing of issue in one of the case, i.e., in RSA No.2175 of 2012 and taking of the objection

qua maintainability of the suit, is not disputed.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that the questions posed above, cannot be answered at this stage as in my view, particularly, the judgment of the Lower Appellate Court being the last Court of facts and law suffers from gross fallaciousness, capriciousness and perversity. Having failed to address the issue qua maintainability of the suit or the Civil Court having jurisdiction, though there is a passing reference of the submission qua maintainability of the suit but there is no adjudication. Even the judgment rendered by this Court in Ram Lal's case (supra) was also referred to but there is no reference to the same while rendering the decision.

I would be refraining myself from answering the questions aforementioned as it would seriously take away the statutory right of the parties in availing the remedy of statutory appeal under Section 96 CPC. There is another reason for me not to answer the aforesaid questions on the premise that the judgment rendered by a learned Single Judge of this Court in RSA Nos.126 of 2013 and 3345 of 2011 is primarily on the premise that the counsel representing the lessees, therein, conceded of having not taken objection before the Courts below, thus, by applying the doctrine of *wavier vis-a-vis* statutory and directory provisions of law declined to interfere resulting into dismissal of the appeals, but the facts revealed above do not bring the appeals within the ambit of the ratio decidendi culled out by this Court in RSA Nos.126 of 2013 and 3345 of 2011, therefore, I am of the view that the matter requires to be remitted back to the Lower Appellate

Court to specifically frame the point of determination as per the provisions of law indicated above, i.e., under Order 41 Rule 31 CPC and decide the controversy afresh, “as to whether in the facts and circumstances of the present case, the Civil Court would have a jurisdiction to grant the decree of possession, in view of the provisions of Section 9 of 1953 Act”, in essence, “whether the status of the lessees on determination of the lease deed would be of tenants holding over or not?” Section 9 of 1953 Act starts with non-substantive clause.

Even if the issue qua maintainability of the suit was not framed, the objections have been taken, particularly in the grounds of appeals and the question raised is purely question of law, in my view, the Lower Appellate Court was enjoined upon an obligation to decide the same.

Accordingly, the judgment and decree of the Lower Appellate Courts are hereby set aside and the appeals are remanded back to the Lower Appellate Court with a direction to decide the controversy, in view of the observations made herein above, preferably within a period of 10 months from the date of receipt of a certified copy of this order.

Parties through their counsel are directed to appear before the Lower Appellate Court on 20.12.2016.

The Regular Second Appeals stand disposed of.

(AMIT RAWAL)
JUDGE

December 02, 2016

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No