

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

RSA No.2531 of 2012 (O&M)

Date of decision : 06.05.2016

Sanjeev Sharma and others

...Appellants

Versus

Yogender Nath Sharma

...Respondent

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. Shrey Goel, Advocate for the appellants.

Respondent-Mr. Yogender Nath Sharma, in person.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the judgment and decree rendered by both the Courts below, whereby suit for permanent injunction with declaration, has been dismissed.

Mr. Shrey Goel, learned counsel appearing on behalf of appellants submits that as per the zimni order reproduced in the grounds of appeal, application under Section 151 of Code of Civil Procedure was filed for sending compromise Ex.D1 and written statement of proforma defendant Nos.5 to 7 in civil suit bearing No.287 of 1996 titled as Yoginder Nath Vs. Shri Triloki Nath etc. for examination and verification to FSL Madhuban, which has not been decided and thus relies upon judgment rendered by Hon'ble Supreme Court.

This fact has not been disputed by Mr. Yogender Nath Sharma, respondent present in person.

I have gone through the zimni orders which are part of memorandum of appeal, which reads thus:-

*“Present:- Shri Rohit Gupta, Advocate for the appellants
Shri H.C. Gupta, Advocate for the respondent
Record received. However, an application under
Section 151 CPC has been filed by learned counsel for the
appellant for sending compromise Ex.D1 and written
statement of proforma defendants No.5 to 7 in civil suit
bearing No.287 of 1996 titled as Yoginder Nath Vs. Shri
Triloki Nath etc. for examination and verification of same for
just and proper decision of present appeal to FSL Madhuban.
Copy given. Case is adjourned to 8.6.2011 for filing reply to
application and for arguments.*

Sd/- (Raj Rahul Garg)

District Judge, Karnal

12.05.2011

*Present:- Shri Rohit Gupta, Advocate for the appellants.
Respondent Yogender Nath in person.
Respondent requested for adjournment
contending that Sh. H.C. Gupta Advocate is unable to attend
the court. He is unwell and some date in the month of
September be given. It is made clear to the respondent that
such long adjournment cannot be given. It is made clear to
the respondent that such long adjournment can not be given.
However, due to vacations, this case is adjourned to 1.8.2011
and this case is also transferred to the court of Sh. R.P. Goel,
Learned Addl. District Judge (FTC), Karnal for decision in
accordance with law. Counsel for the appellant and
respondent are directed to appear before the transferee Court
on the date fixed at 10 AM sharp.*

Sd/- (Raj Rahul Garg)

District Judge, Karnal

08.06.2011

Present:- Shri Rohit Gupta, Advocate for the appellants.

Respondent Yogender Nath in person.

Appeal received by way of assignment. It be checked and registered. Case file be put up on 1.8.2011, the date already fixed in this case.

Sd/- (R.P. Goyal)

ADJ(FTC) Karnal.

14.06.2011

Present: None

File taken up today as I shall remain on leave on 30.07.2011 and 1.8.2011, therefore, the case stands adjourned to 30.8.2011 for the purpose already fixed. Parties/counsel/all concerned be informed accordingly.

Sd/- (Rajinder Pal Goyal)

ADJ/ASJ/MACT, (FTC) Karnal

28.07.2011

Present:- Shri Rohit Gupta, Advocate for the appellants.

Respondent Yogender Nath in person with Sh.

H.C. Gupta, Advocate

Arguments on the application u/s 151 CPC not advanced. An adjournment is requested, which is not opposed. Now case is adjourned to 25.10.2011 for arguments on the application u/s 151 CPC as well as in the main appeal.

Sd/- (R.P. Goyal)

ADJ (FTC) Karnal

30.08.2011

Present:- Shri Rohit Gupta, Counsel for the appellants.

Respondent Yogender Nath in person.

Respondent Yogender Kumar aged about 61 years seeks long adjournment of two months on the ground that his advocate is ill. This case is of action plan. The Supreme Court and High Court has gave instructions to

dispose of the cases of the aged persons above 60 years of age at the earliest. Therefore, long adjournment cannot be given in any manner. The respondent is at liberty to bring his counsel on the next date of hearing or to engage a new counsel. Keeping in view of the age of the case and also the age of the party, case to come up on 2.11.2011 for arguments.

Sd/- (R.P. Goyal)

ADJ(FTC), Karnal

25.10.2011

*Present:- Shri Rohit Gupta, Advocate for the appellants.
Respondent Yogender Nath in person with Sh.
H.C. Gupta, Advocate.*

Arguments not advanced. An adjournment is requested by Ld. Counsel for appellant on the ground that he wants to produce some documents, which is not opposed. To come up on 9.11.2011 for arguments.

Sd/- (R.P. Goyal)

ADJ(FTC) Karnal

02.11.2011

*Present:- Shri Rohit Gupta, Advocate for the appellants.
Respondent Yogender Nath in person with Sh.
H.C. Gupta, Advocate*

On the joint request of the ld. Counsel for the parties, case is adjourned to 18.11.2011 for arguments.

Sd/- (R.P. Goyal)

ADJ(FTC) Karnal

09.11.2011

*Present:- Shri Rohit Gupta, Advocate for the appellants.
Respondent Yogender Nath in person with Sh.
H.C. Gupta, Advocate*

Arguments not advanced. An adjournment is requested by ld. Counsel for the parties that he is not well and is not in a position to argue the case, which is not opposed. To come up on 30.11.2011 for arguments.

Sd/- (R.P. Goyal)

ADJ(FTC) Karnal

18.11.2011

Present:- Shri Rohit Gupta, Counsel for the appellants.

Respondent in person.

Part arguments heard. For remaining arguments to come up on 13.12.2011.

Sd/- ADJ Karnal

30.11.2011

Present:- Shri Rohit Gupta, Counsel for the appellants.

Respondent in persons

Arguments concluded. For orders to come up after lunch.

Sd/- ADJ Karnal

13.12.2011

Present:- Shri Rohit Gupta, Counsel for the appellants.

Respondent in person.

Order pronounced. Vide my separate judgment of even date, the appeal has been dismissed with costs. File after due compliance be consigned to record room.

Sd/- ADJ Karnal

13.12.2011”

There is no separate order of deciding the application, much less, impugned judgment and decree also does not spells out the decision of the same. In view of the ratio decidendi culled out by Hon'ble Supreme Court in *Malayalam Plantations Ltd. Vs. State of Kerala & another, 2011 AIR SC 559*, the matter is required to be remitted back to the lower Appellate Court.

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 and application aforementioned in accordance with law, preferably within a period of six months from the date of receipt of certified copy of this

order.

Appeal is disposed of.

Parties through their counsel are directed to appear before lower
Appellate Court on 26.05.2016.

06.05.2016

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(AMIT RAWAL)
JUDGE