

216

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

**RSA-3009-2012 (O&M)
Date of decision : 11.04.2016**

Ajit Singh

...Appellant

Versus

Karam Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vipin Mahajan, Advocate
for the appellant.

Mr. J.P. Dhull, Advocate
for respondent Nos.1 to 5.

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-defendant is aggrieved of the concurrent findings of fact, whereby the suit for damages has been decreed by both the Courts below.

Mr. Vipin Mahajan, learned counsel appearing on behalf of the appellant-defendant submits that the tenant in the property, in dispute, lodged an FIR bearing No.176 dated 18.09.1999 under Section 419, 420, 467, 468, 471/120-B of the Indian Penal Code against the respondents-plaintiffs. In those proceedings, the respondent(s)-plaintiff(s)-accused were acquitted vide judgment dated 30.11.2002 as the prosecution failed to lead evidence. However, the real owner of the property instituted a suit challenging the sale deeds on the basis of which FIR was lodged. The copy of the judgment and

decree has been placed and proved on record as Ex.D-1, Ex.DX and Ex.DY. By virtue of that, the sale deeds were set aside and the original owner was declared to be owner. He further submits that no independent evidence viz-a-viz the damages to the extent of ₹ 2,00,000/-has been led except by tendering the judgment rendered by the Criminal Court, thus, urges this Court to formulate the following substantial questions of law:

1. Whether in the absence of any independent evidence except by tendering a judgment of the Criminal Court vide which respondent(s)-plaintiff(s) have been acquitted, the suit for damages is maintainable.
2. Whether there is illegality and perversity in the judgment and decree of both the Courts below.

Mr. J.P. Dhull, learned counsel appearing on behalf of the respondents-plaintiffs submits that there is a categorical finding in the other civil litigation that the appellant Ajit Singh was not the party, it was the litigation between the original owner and the respondent(s)-plaintiff(s) and therefore, the said judgment would not be binding upon the respondent(s)-plaintiff(s) and rightly so, the suit has been decreed and prays for dismissal of the appeal as no substantial question of law arises for determination.

In rebuttal, Mr. Vipin Mahajan, Advocate submits that the other civil litigation was at the instance of the appellant's son, namely, Gurdial Singh, as attorney holder.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is substance in the submissions of Mr. Vipin Mahajan, for the reasons that the acquittal vide judgment dated 30.11.2002 is based upon no evidence as the prosecution failed to lead evidence. Otherwise, the respondent(s)-plaintiff(s) have failed to lead any

independent evidence viz-a-viz the damages to the extent of ₹ 2,00,000/- except by tendering the judgment rendered by criminal court. It is settled law that in the claim for damages, separate independent evidence is required to be led to lay foundation. Even otherwise, the sale deeds vide which the respondent(s)-plaintiff(s) claimed to be owner, has been set aside. This fact have not been noticed by both the Courts below, whereas, just by observing that the parties were different decreed suit. I am not in agreement with the findings rendered by both the Courts below.

Keeping in view the aforementioned facts and circumstances of the case, the judgment and decree of both the Courts below are hereby set aside. The substantial questions of law as noticed above are answered in favour of the appellant-defendant and against the respondent(s)-plaintiff(s). Suit sands dismissed.

With the aforesaid observations, the appeal is allowed.

11.04.2016
yogesh

(AMIT RAWAL)
JUDGE