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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1688-2014 (O&M)
Date of decision : 09.11.2016

Sewa Singh and another

... Appellants

Versus

Sukhwinder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwal Goyal, Advocate
for the appellants.

Mr. G.S. Nahel, Advocate
for respondent No.1.

Mr. M.K. Singla, Advocate
for respondent No.2.

AMIT RAWAL, J. (ORAL)

CM-4145-C-2014

Prayer in this application is for condonation of delay of 610 days in filing the appeal.

The ground taken in the application is that the applicants/appellants was never apprised of the outcome of the appeal. Each and every date had been explained.

Mr. Kanwal Goyal, learned counsel appearing on behalf of the applicants/appellants submits that the person should not be made to suffer for the lapse of the counsel. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Rafiz and another Vs. Munshi and another” AIR 1981 SC 1400.**

Notice of this application was issued way back in the month of May, 2015 but the respondents did not file the reply till date. The ground and explanation given in the application is plausible and justified. Since the appellants have a *prima facie* case on merits, I am of the view that no harm and prejudice would be caused in case the delay of 610 days in filing the accompanying appeal is condoned, accordingly, the delay of 610 days in filing the appeal is condoned.

CM stands disposed of.

RSA-1688-2014

The appellants-defendant No.2 and 3 being vendees of the land purchased vide sale deed dated 11.05.2005, are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the appeal of the respondent No.1-plaintiff against the decretal of the suit and non-grant of the declaration qua the setting aside of the sale deed, has been allowed.

Mr. Kanwal Goyal, learned counsel appearing on behalf of appellants-defendants No.2 & 3 being vendees submits, that respondent No.1-plaintiff instituted a suit for recovery of an amount of ₹ 4,55,000/- (Principal amount of ₹ 3,50,000/- and interest of ₹ 1,05,000/-) on the basis of the pronote dated 10.11.2002 and also sought setting aside of the sale deed dated 11.05.2005 on the premise that the executant of the pronote, defendant No.1, respondent No.2 herein, could not have sold the property.

He further submits that an application under Order 38 Rule 5-A of the Code of Civil Procedure along with the suit was filed but the same was never pressed which is indicated from the order dated 15.06.2005. The subject matter of the suit was for recovery of the amount, which was decreed by the trial Court. It is totally un-understandable or unimaginable

as how the lower Appellate Court has granted liberty to the plaintiff to recover the amount from the appellants and thereafter, from defendant No.1/respondent No.2. The appellants-defendants No.1 & 2 have no *lis* of privity to the pronote and therefore, the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law, thus, urges this Court for setting aside the same as there is a gross illegality and perversity.

Mr. G.S. Nahel, learned counsel appearing on behalf of respondent No.1-plaintiff submits, that no doubt the trial Court had granted the relief of recovery of amount as indicated above but defendant No.1 is not left with any other property to seek the recovery of the amount, in essence, the decree cannot be executed in the absence of any particulars of the immovable property and therefore, the findings rendered by the lower Appellate Court are perfect, legal and justified, thus, urges this Court for affirming the findings under challenge as there is no illegality and perversity.

Mr. M.K. Singla, learned counsel appearing on behalf of respondent No.2/defendant No.1 submits that, against the judgment and decree of both the Courts below, appeal bearing RSA No.738 of 2013 was preferred in this Court but the same has been dismissed vide order dated 21.02.2013.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and substance in the submissions of Mr. Kanwal Goyal, as admittedly the pronote dated 10.11.2002 was executed by defendant No.1/respondent No.2 in favour of plaintiff. The suit should have been a *simpliciter* for recovery of the amount. Once the plaintiff has been able to prove the pronote and

defendant No.1-loanee was not successful upto this Court, therefore, decree of the trial Court was perfect, legal and justified. The lower Appellate Court has created a very analogous situation which is very unknown to the settled cannons of law by directing the appellants-defendants No.1 & 2 being vendees of the land described in the sale deed dated 11.05.2005 to satisfy the plaintiff and thereafter, filed a suit and recovered it from the defendant No.1/respondent No.2. This would arise to multiplicity of the litigation, much less, when the application for attachment had not been pressed.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213”**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **“Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others” 2001(4) SCC 262**, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi 's case** (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29] ”*

27. *Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”*

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the foregoing reasons, the findings of the lower Appellate Court are, thus, wholly unsustainable, much less, perverse and the same are hereby set aside and that of trial Court is restored. Suit of the respondent No.1/plaintiff qua decretal of the amount as ordered by the trial Court, stands decreed.

Since the appellants-defendants No.1 & 2 has deposited the decretal amount on 15.06.2015, they shall be entitled to seek refund of the amount by taking the aid of the provisions of Section 144 of the Code of Civil Procedure.

The appeal stands allowed in the aforementioned terms.

09.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No