

In the High Court of Punjab and Haryana at Chandigarh

SAO No. 36 of 2015(O&M)

Date of Decision: 11.1.2016

Kusum

---Appellant

versus

Jagdish Rai Bagla and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Mani Ram Verma, Advocate
for the appellant

Mr. Mukesh Kumar Mittal, Advocate
for respondents No. 1 and 2

Mr. Bharat Bhushan Azad, Advocate
for respondents No. 11 to 13

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

Rekha Mittal, J.

The present appeal has been directed against order dated 7.3.2015 passed by the Additional District Judge, Bhiwani whereby judgment and decree passed by the trial court dismissing suit of the respondents-plaintiffs has been set aside and the matter has been remanded to the trial court for decision afresh.

The notice of motion order dated 24.4.2015 reads as follows:-

“The lower appellate court appears to have avoided

adjudication of appeal on merits by merely observing that defendant No. 5, who had a common interest with her co-defendants, was not served. The remand order appears to be apparently wrong.

Notice of motion for 9.7.2015.

Operation of the impugned order will remain stayed.”

It is an admitted position that a suit was instituted by Jagdish Rai Bagla and Ajay Bagla for removal of the defendants from the office of Poojari and their names from revenue record and a challenge was laid to sale deeds bearing Nos. 1587 dated 3.7.2006, 1623 dated 5.7.2006, 1650 of 6.7.2006 and 1925 dated 24.7.2006 allegedly executed by defendants No. 1 to 15 in favour of defendants No. 16 to 26 in respect of the land detailed in the head note of the plaint. The suit filed by the plaintiffs was dismissed by the learned trial court. The plaintiffs preferred an appeal to challenge the judgment and decree passed by the trial court. It was none of the plea of the respondents in the appeal that either respondent No. 5 was not properly served or for that reason the matter requires consideration afresh by the learned trial court.

A plain reading of the impugned order leaves no manner of doubt that the first appellate court, for the reasons best known, avoided to decide the appeal on merits and adopted a casual and perfunctory approach for setting aside the judgment and decree passed by the trial court without assigning any valid reason and remitted the matter to the trial court for decision afresh. This Court does not expect from the appellate courts

manned by sufficiently experienced Judicial officers to adopt such an approach to dispose of the appeal in a slipshod manner. In view of the above, the order impugned is illegal and cannot be allowed to sustain.

For the reasons aforestated, the appeal is allowed. The impugned order dated 7.3.2015 is set aside and the appeal filed by Jagdish Rai Bagla and another is remitted to the appellate court for decision on merits, in accordance with law.

(Rekha Mittal)
Judge

11.1.2016

PARAMJIT