

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

Decided on: 23.05.2016

1. SAO No.84 of 2014 (O&M)

Joga Singh	Versus	Appellant
Bachni and others		Respondents

2. SAO No.86 of 2014 (O&M)

Shangara Singh and others	Versus	Appellants
Bachni and others		Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Keshav Pratap Singh, Advocate
for the appellant (in SAO No.84 of 2014)

Mr. Sarju Puri, Advocate
for the appellants (in SAO No.86 of 2014)

Mr. Rahul Rampal, Advocate
for respondent No.1 (in SAO Nos.84 and 86 of 2014)

REKHA MITTAL J.

This order will dispose of SAO Nos.84 of 2014 “*Joga Singh vs Bachni and others*” and No. 86 of 2014 “*Shangara Singh and others vs Bachni and others*” as these have emerged out of the same order passed by the Additional District Judge, SBS Nagar. For brevity, facts are taken from SAO No.84 of 2014.

Counsel for the appellant would contend that Bachni – respondent No.1 filed a suit for declaration with consequential relief of permanent injunction and further prayed for relief of joint possession in the alternative in respect of land measuring 147 kanals 02 marlas situated in the area of village Karawar, Sahiba and Ottal Mazara claiming herself to be the natural heir of deceased – Babu Ram son of

Dhani Ram. She further laid challenge to Will dated 13.08.1996 purported to be executed by Sh. Babu Ram in favour of defendants No.1 to 6. A part of suit land had been sold by Jagtar Singh – defendant No.3 in favour of Joga Singh – defendant No.14 to the extent of 12 kanals 01 marla vide sale deed dated 18.07.2007. It is further contended that in view of pleadings of the parties, the trial Court framed as many as 09 issues reproduced in Para 5 of the judgment dated 25.04.2012 passed by the learned trial Court. An additional issue namely issue No.8A was framed later to the effect '*whether defendant No.14 is bona fide purchaser for valuable consideration and without notice of any defect in title, if so to what effect?*' OPD. On the basis of pleadings of the parties, evidence adduced and rival submissions made by their respective counsel, the learned trial Court recorded its findings on Issues No.1 to 8 reproduced in Para 8 of the judgment. According to counsel, though the judgment of the learned trial Court does not make reference to Issue No.8A referred hereinbefore but the trial Court also recorded its findings *qua* Joga Singh being the *bona fide* purchaser for consideration without notice.

It is further argued that the suit filed by Smt. Bachni was dismissed by the trial Court vide judgment and decree dated 25.04.2012 and the matter was carried in appeal by the unsuccessful plaintiff. The appeal filed by Smt. Bachni was allowed, the judgment and decree passed by the trial Court was set-aside and the matter has been remitted to the trial Court for deciding the suit afresh by giving findings on all the issues, in view of observations made by the Appellate Court in Para 12 of the judgment. It is argued with vehemence that though the trial

Court has already decided the question of Joga Singh – defendant No.14 to be a *bona fide* purchaser for consideration and without notice of any defect in title but even if the Appellate Court was of the view that the said issue remains to be decided by the trial Court, it cannot constitute a valid ground for the Appellate Court to set-aside the judgment and decree and remit the matter to the trial Court for decision afresh. The Appellate Court, at best, can call for a report from the trial Court on Issue No.8A, if it is so warranted though the Appellate Court is competent to decide that issue in view of the materials already on record. It is further submitted that setting-aside of the detailed and well reasoned judgment by the Court in appeal on the premise that the judgment of the trial Court does not make reference to Issue No.8A cannot stand the test of judicial scrutiny, in view of the provisions of Order 41 Rules 24 and 25 CPC.

Counsel for the contesting respondent has supported the judgment passed by the Court in appeal with the submissions that though in the judgment passed by the learned trial Court, there is a passing reference that Joga Singh was a *bona fide* purchaser but the Court has neither taken care to note Issue No.8A nor dealt with the evidence adduced on the said issue, therefore, no fault can be found in the judgment passed by the Court in appeal by setting-aside the judgment passed by the trial Court and remitting the matter for adjudication afresh. It is further submitted that as the trial Court is under an obligation to decide all the issues, failure to do so would entail setting-aside of the judgment as has been done in the present case.

I have heard counsel for the parties, perused the records

and find that the appeal is meritorious and deserves to be accepted.

It is an admitted position of the case that the learned trial Court recorded its findings on Issues No.1 to 8 detailed in Para 5 of the judgment and as a consequence thereof, Issue No.9 pertaining to relief was decided and suit of the respondent/plaintiff was ordered to be dismissed with no order as to costs. There is also no denial that the trial Court framed Issue No.8A in regard to Joga Singh – appellant (defendant No.14) being a *bona fide* purchaser for a valuable consideration and without notice of any defect in title but the said issue does not find a specific reference in the judgment, may be, due to inadvertent mistake on the part of the trial Court.

Counsel for the parties have not disputed that the parties adduced evidence knowing fully well their case and the issues framed by the trial Court including Issue No.8A. The learned trial Court on a detailed consideration of the materials on record and after adverting to the rival submissions made by counsel for the parties recorded its findings non-suited claim of the respondent/plaintiff that she is entitled to suit property on the basis of natural succession or the Will dated 13.08.1996 is the result of forgery and fabrication. On the contrary, the Will dated 13.08.1996 was upheld while recording findings on Issue No.2, the onus whereof was laid upon the propounders of the Will. Not only this, the trial Court in Para 44 of the judgment at 02 places has held that Joga Singh is proved to be the *bona fide* purchaser of suit land from Jagtar Singh (defendant No.3). Even if it is assumed for the sake of arguments that the trial Court has not recorded its findings on Issue No.8A by adverting to the materials on record in detail, that itself is not

sufficient for the Appellate Court to set-aside the judgment and decree and remit the matter to the trial Court for adjudication afresh. The Appellate Court, at best, could call for a report from the trial Court on Issue No.8A and thereafter decide the appeal, in accordance with law.

Taken from another angle, as the parties have already adduced their evidence knowing fully well their case and in the light of issues framed by the trial Court, the Appellate Court was competent to record its findings on all the issues including Issue No.8A. In the given facts and circumstances of the present case, the manner in which the Appellate Court has disposed of the appeal shows an attitude of avoidance to decide the appeal on merits and further to prolong agony of the contesting parties and that too at the cost of wastage of precious time of the Court and inconvenience to the parties. The order passed by the Appellate Court in setting-aside the judgment and decree passed by the trial Court and remitting the matter to the trial Court for adjudication afresh, by no stretch of imagination, falls within the purview of Order 41 CPC and thus, the judgment passed by the Court in appeal cannot be allowed to sustain and accordingly set-aside.

In view of what has been discussed hereinabove, the appeals are allowed, the judgment passed by the Court in appeal is set-aside and the matter is remitted to the First Appellate Court for decision of the appeal afresh, in accordance with law. The Appellate Court, in view of materials on record shall record findings on all the issues, in accordance with law. No order as to costs.

23.05.2016
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(REKHA MITTAL)
JUDGE