

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 111

Civil Revision No.374 of 2017 (O & M)
Date of Decision: February 02, 2017

Baldevi Devi & others

..... PETITIONERS

VERSUS

Pawan Kumar & another

..... RESPONDENTS

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

...

PRESENT: - Mr. Balkar Singh, Advocate, for the petitioners.

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Jaspal Singh, J

1. By virtue of instant petition, preferred under Article 227 of the Constitution of India, petitioner have sought setting aside of judgment dated January 06, 2017 passed by the lower appellate court whereby judgment & decree dated February 27, 2015 passed by the trial court has been set aside and suit has been remanded back to the trial court for fresh decision.

2. Brief facts giving rise to the instant lis are that petitioners filed a suit for possession by way of ejectment from the suit property on August 16, 2008 before the Civil Judge (Junior Division), Ambala. In the meantime, new sub division Naraingarh became functional and the jurisdiction of area of suit property came under Sub Division Naraingarh.

The said suit was withdrawn on February 20, 2010. Thereafter, a fresh suit

was filed at Naraingarh after serving notice under Section 106 of the Transfer of Property Act, 1882 (for short, 'Act') which was decreed in favour of the petitioners vide judgment dated February 27, 2015. During the pendency of suit before the trial court, respondent – defendant Pawan Kumar filed an application under Order VII Rule 11 CPC for dismissal of the suit on the ground that a similar suit was earlier filed by the plaintiffs which was withdrawn vide order dated February 20, 2010, hence, fresh suit is not maintainable. However, said application was dismissed vide order dated December 04, 2013. Even a revision petition No.1553 of 2014 preferred against aforesaid order dated December 04, 2013 was also dismissed.

3. Feeling aggrieved against judgment & decree dated February 27, 2015, one of the respondents namely Pawan Kumar son of Laxman Dass filed an appeal. The lower appellate court, vide judgment dated January 06, 2017 has set aside the aforesaid judgment after framing an issue and remanded the suit back for fresh decision.

4. While assailing the impugned judgment, it has been contended by learned counsel for the petitioners that vide impugned judgment dated January 06, 2017, a well reasoned judgment & decree dated February 27, 2015 has been set aside by the lower appellate court which is absolutely against the letter and spirit of order XLI Rules 23 & 25 CPC. Infact, there was no requirement for framing an additional issue when the matter has already been set at rest. Moreover, the material question involved in the present revision petition is whether the suit of petitioners - plaintiffs is barred on the ground of non-payment of rent. Otherwise also, previous suit at Ambala was filed without serving notice under Section 106 of the Act, and subsequent suit was filed after serving the requisite notice under Section

lower appellate court while remanding the case back to trial court for fresh decision.

5. After bestowing due consideration to the aforesaid submissions made by learned counsel for the petitioners and scrutinizing the impugned judgment, this Court does not find any merit in the same.

6. Undisputably, a specific plea has been taken in the written statement before learned trial court that suit of the plaintiffs is barred by resjudicata as the previous suit titled 'Baldevi Devi & others vs. Ram Karan & another' was withdrawn by the plaintiffs vide order dated February 20, 2010, Ex.D-2, without taking permission to file fresh suit on the same cause of action and that the same is barred under Order II Rule 2 CPC. Despite a categorical averment, no issue was framed by learned trial court in this regard. The finding on the issue which has been now framed by the lower appellate court to the effect that whether suit of the plaintiffs is barred under Order II Rule 2 CPC, goes to the root of the case. Thus, this Court is of the considered view that after framing an additional issue, judgment & decree passed by the trial court has rightly been set aside and suit has been remanded back to the trial court for fresh decision after hearing both the parties as well as to adduce their respective evidence, if any.

7. In the light of what has been discussed above, this Court does not find any infirmity or illegality in the impugned judgment. As such, the instant revision petition is dismissed.

February 02, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No