

C.R. No. 452 of 2011

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 452 of 2011

DATE OF DECISION:01.05.2017

Rashpinder Pal and another

.....Petitioners

Versus

Mukhtiari Devi and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. SS Rangi, Advocate
for the petitioners.

Mr. TS Chauhan, Advocate
for the respondents.

DAYA CHAUDHARY, J.

Petitioners-defendants filed a suit for recovery of possession under Section 6 of Specific Performance Act over land bearing Khewat/ Khatauni No. 145/165, Khasra No. 131/206/183 (0-5) situated in village Chappar Chiri, Tehsil Kharar, District SAS Nagar, Mohali with consequential relief of permanent injunction in any manner i.e. by way of sale, gift, mortgage, exchange and to raise construction on the disputed property.

Suit of the plaintiffs was decreed with cost vide judgment and decree dated 27.9.2010. Aggrieved by the aforesaid decision, petitioners-defendants have filed the present revision petition.

Apart from merits, learned counsel for the petitioners submits that issue No.2 i.e. “whether suit is not maintainable? OPD” has not been considered and no finding whatsoever has been recorded. In absence of any

finding recorded on a particular issue, the judgment is not operative and is liable to be remanded.

Learned counsel for the respondents has also not disputed with regard to non-recording of any finding on issue No.2.

Heard the arguments of learned counsel for the parties and have also perused the judgment of the trial Court.

The following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to recovery of possession of the suit property under Section 6 of the Specific Relief Act, as prayed for? OPD
2. Whether the suit is not maintainable? OPD
3. Whether the suit is bad for non-joinder and mis-joinder of necessary parties, if so its effect? OPD.
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the plaintiff has no locus-standi to file the present suit? OPD
6. Relief.

On perusal of said issues, it is clear that there was no specific issue as to whether the respondents were entitled for any relief of injunction. The trial Court can only grant relief of possession but the trial Court has gone to the extent of putting restraint on the petitioners from alienating the property in dispute in any manner. Even the trial Court has not recorded any findings with regard to issue No.2. Immediately after issue No.1, issues No.3 and 4 have been discussed, which shows the casual approach of the trial Court.

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Accordingly, the revision petition is remanded with a direction to the trial Court to record finding on issue No.2. Both the parties are directed to appear before the trial Court on 30.5.2017 and the trial Court is directed to pass fresh order in accordance with law after hearing both the parties.

Disposed of accordingly.

May 01, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes