

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

-.-

R.S.A No.1050 of 2013 (O&M)
Date of decision: 02.02.2017

Dhan Singh and Ors.

... Appellants

Vs.

Rajinder and Ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rajinder Goyal Advocate for the appellants.

Mr. Adarsh Jain, Advocate, for the respondents.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 02.11.2012 passed by learned Additional District Judge, Palwal, allowing the appeal of the defendants, setting aside the judgment and decree dated 23.03.2011 passed by learned trial Court, decreeing the suit for permanent injunction, the plaintiffs have approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by learned trial Court in para 1 of its impugned judgment, are that Sh. Dhan Singh etc, the plaintiff, filed the suit claiming themselves to be in cultivating possession of the land measuring 16 kanals 5 marlas as detailed in para No.1 of the plaint (hereinafter called the suit property) as tenants. Prior to the plaintiffs, Sh. Pyare Lal, the father of the plaintiffs, was the tenant in possession over the suit property under the defendants on payment of 1/3rd of farm produce for more than 50 years. The plaintiffs have sown wheat crop in the suit

property. The defendants are forceful person and they intend to dispossess the plaintiffs without any right. Despite repeated requests when the defendants did not desist from their illegal act, the plaintiffs are constrained to file this suit seeking a decree for permanent injunction restraining the defendants from interfering in their peaceful possession and from destroying their crop over the suit property.

Having been served, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiffs are entitled to a decree of injunctions on the grounds mentioned in the plaint?OPP
2. Whether plaintiffs have got no locus standi to file the present suit?OPD
3. Whether the suit is not maintainable?OPD
4. Whether the plaintiffs are estopped by their own acts and conduct from filing the present suit?OPD
5. Whether the suit is frivolous and vexatious and so the same is liable to be dismissed with special costs under Section 35-A C.P.C?OPD.
6. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on

record, learned trial Court came to the conclusion that plaintiffs have duly proved their case. Accordingly, suit for permanent injunction was decreed vide judgment and decree dated 23.03.2011, restraining the defendants from interfering in the peaceful possession of the plaintiffs.

Defendants filed their first appeal. During the pendency of the appeal, the defendants moved an application under Order 6 Rule 17 read with 151 C.P.C for amendment of the written statement, contending that since part of the suit land has been acquired by the State Government, they may be permitted to amend their written statement. The averments taken in para 4(a) of the application dated 12.09.2012 moved by the defendants reads as under:-

“4(a) That lands comprising in Rect. No. 17, Killa No. 14/2/2(1-17) and 15/2/2(3-17) have already been acquired by the State Government for super express highway and mutation of change of ownership in the name of Government of Haryana has also been sanctioned at No.1635 and that the plaintiffs have concealed this material fact from the Hon'ble Court, so they have not come with clean hands and hence they are not entitled to the relief of injunction, which is an equitable relief.”

Although, the above said application seeking amendment in the written statement, moved by the defendant before the learned first appellate court, was dismissed vide order dated 23.10.2012 (Annexure A/2), yet the learned first appellate court took notice of the fact that land under the

tenancy of the plaintiffs was since acquired by the State Government, the appeal of the defendants deserve to be allowed and the same was, accordingly allowed, vide impugned judgment and decree dated 02.11.2012. Hence, this regular second appeal at the instance of the plaintiffs.

Notice of motion was issued.

Heard learned counsel for the parties.

During the course of hearing, it has gone undisputed before this Court that the total land under the tenancy of the plaintiffs-appellants was measuring 16 kanal 5 marla. Out of this total land, land measuring 5 kanal 14 marla was acquired by the State Government, particulars whereof, have been pointed out by the defendants-respondents.

It is neither pleaded nor argued case on behalf of the respondents that total land under the tenancy of the plaintiffs was acquired by the State Government. It has also not been disputed by the learned counsel for the respondents that the learned first appellate court did not consider the merits of the case and their appeal was allowed only on the ground that the total land under the tenancy of plaintiffs-appellants stood acquired by the State Government.

Having said that, this Court feels no hesitation to conclude that the impugned judgment and decree passed by the learned first appellate court cannot be sustained. Learned counsel for the appellants has been found justified in saying that since the learned first appellate court has not recorded findings on merits of the case, the impugned judgment is liable to be set aside and the matter deserves to be remanded to the learned first appellate court for fresh decision on merits. This contention raised by

learned counsel for the appellant could not be denied by the learned counsel for respondents and rightly so, it being a matter of record.

In view of the abovesaid fact situation obtaining on record of the case and without commenting upon the impugned judgment any further, it is unhesitatingly held that since the impugned judgment has been found suffering from patent illegality, the same is liable to be set aside. Since, learned first appellate court has not returned any findings on the merits of the case, learned counsel for the appellant was right in saying that present matter deserves to be remitted to the learned first appellate court for its fresh decision on merits.

Having considered peculiar facts and circumstances of case, as noticed above, this Court is of the considered view that since impugned judgment and decree passed by the first appellate court have been found suffering from patent illegality and perversity, besides being contrary to the record, the same cannot be sustained. Accordingly the impugned judgment and decree are hereby set aside. Consequently, the matter is remitted to the learned first appellate court for its fresh decision on merits of the case.

Let learned first appellate court decide the appeal afresh on merits, in accordance with law, after granting due opportunity of being heard to both the parties. Since the matter remained pending before this Court for quite some time, it would be just and expedient that the appeal be heard and decided on merits by the first appellate court at an early date.

Parties are directed to appeal before the first appellate court on 20.02.2017.

Resultantly, with the abovesaid observations made, instant

regular second appeal stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

02.02.2017
tripti

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes