

RSA No. 6732 of 2016 (O&M)

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

RSA No. 6732 of 2016 (O&M)

Date of Decision: 17.7.2017

Sardool Singh @ Dulla and another

.....Appellants

Vs.

Joginder Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Umesh Kumar Kanwar, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

CM No. 5189-C-2017

Learned counsel for the applicants submits that instead of deciding this application, let the main case be heard and decided.

In view of the oral request made by learned counsel for the applicants, date of hearing is preponed from 4.10.2017 to today, i.e. 17.7.2017. Case is taken up on board for final disposal.

CM stands disposed of.

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Present regular second appeal, at the hands of defendants, is directed against the judgment of reversal dated 25.10.2016 passed by the learned Additional District Judge, whereby first appeal of the plaintiff was allowed, setting aside the judgment and decree dated 14.5.2013 of the learned trial court.

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Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that appellants approached the learned trial court on the averments that the connection in dispute had been installed on land in khasra number 60//19/2 (5-15) and 22 min (6-10) in the name of Bakshish Singh and the said land was put for auction in the matter of execution in case State Bank of Patiala versus Bakshish Singh and plaintiff was the successful bidder in the auction held on 27.10.2007. Bakshish Singh had since died and defendants No.4 to 7 were his successors-in-interest. Ever since the auction, plaintiff was in possession of the land, bore, electricity connection, motor and a room constructed at the spot. The plaintiff approached defendants No. 1 to 3 for transfer of the connection in his name but they refused and defendants No. 4 to 7 also refused to acknowledge his rights and threaten to alienate the connection as such the suit was filed.

Defendants were put to notice. Real contest was between the plaintiff and defendants No. 4 to 6. They put appearance and filed their written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to declaration as prayed for?OPP
2. If so, plaintiff is entitled to mandatory injunction against defendants No.1 to 3, as prayed for?OPP
3. If so, whether the plaintiff is entitled to permanent injunction against defendants No. 4 to 9 as prayed for? OPP
4. Whether the suit is not maintainable?OPD
5. Whether the plaintiff has concealed the material facts

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from the court?OPD

6. Whether counter-claimants are entitled for permanent injunction as prayed for?OPD 4 to 5.

7. Whether counter-claim is not maintainable?OPP

8. Relief

In order to to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has failed to prove his case. Accordingly, suit for declaration filed by the plaintiff was dismissed by the learned trial court, vide judgment and decree dated 14.5.2013. Feeling aggrieved, plaintiff-Joginder Singh filed his first appeal, which came to be allowed by the learned first appellate court, vide impugned judgment and decree dated 25.10.2016. Hence this regular second appeal at the hands of unsuccessful defendants No.4 and 5.

Heard learned counsel for the appellants.

It is not in dispute that plaintiff purchased the land in a public auction. Said land was earlier mortgaged by father of the appellants with the Bank. Since he could not repay the loan, the land was put to auction by the Bank. Plaintiff was found successful bidder and as a consequence thereof, land measuring 12 kanal 5 malra was purchased by him. At the time of auction, a report was prepared which came to be exhibited on record as PW1/5. Dispute between the parties is only qua tubewell connection. In the report PW1/5, it was recorded that there is a tubewell and bore connection at the spot. It is also not in dispute that judgment-debtor who was predecessor-in-interest of the present appellants had other land also adjoining the land

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purchased by the plaintiff but said land was not put to auction.

It is very relevant to note here that at the time of auction, it was not suggested by the judgment-debtor that selling of land does not include the machinery installed therein. Once that is so, defendants-appellants would be bound by the said report Ex.PW1/5 which has proved to be a clincher in favour of the plaintiff-respondent and against the appellants-defendants. Since this material aspect of the matter has not been properly appreciated by the learned trial court, the learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree, thereby setting aside the judgment and decree passed by the learned trial court.

The contentions raised by learned counsel for the appellants, while placing reliance on two judgments of Allahabad High Court in **Umrao Singh Vs. Kacheru Singh and others, AIR 1939 Allahabad 415 (FB)** and **Krishan Mohan and another Vs. Bal Krishna Chaturvedi, AIR 2001 Allahabad 334**, have been duly considered and found wholly misplaced. There is no dispute about the law laid down and observations made in the cited judgments. However, on a close perusal of the cited judgments, none has been found to be of any help to the appellants, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit**

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Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.

With a view to avoid repetition and also for the sake of brevity, observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in Ganeshi Lal's case (supra), reiterating its view taken in Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

11. "12....*Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and*

Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become

necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing

reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it

***Ed.** See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."*

Once the defendants-appellants and before them, their predecessor-in-interest remained silent at the time of auction and did not raise any objection against report Ex.PW1/5 prepared at the time of auction, which specifically included the motor and bore connection at the spot, it is clear that their entire case was based on an afterthought. Appellants had an opportunity to raise objection against the report (Ex.PW1/5) but they failed to do so, for the reasons best known to them. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

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Learned first appellate court, before arriving at a judicious conclusion, rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in para 17 and 18 of its impugned judgment, which deserve to be noticed here, read as under:-

“ In the light of the aforesaid provisions, it needs to be considered by the court that at the time when the property was put up for auction, the then JD, who was the predecessor-in-interest of the present respondents No. 4 to 9, had other property also but the same was not put for auction. There is nothing on record to suggest that at any point of time at the time of auction, it was ever suggested to the bidder that the sale of land would not include the machinery installed therein and the machinery installed would be of no use if the connection was not to be sold along with the machinery. The machinery without the connection would only be a clog on the use of land which could otherwise be put to some other use especially agricultural use. Accordingly, it can be said that in the absence of any contrary intention appearing on record and in view of the fact that the plaintiff was even put in possession of the connection existing at the spot, it can be said that along with the land in dispute, the connection was also transferred to the plaintiff and as such the plaintiff is entitled to get the

same transferred in his name and the suit of the plaintiff is accordingly liable to be decreed.

Further, this Court also finds favour with the arguments raised by the counsel for the appellant that the revenue record indicates that the land which was purchased by the appellant in auction has a passage to provide access and the defendant have no right to interfere in the use of the land by the plaintiff by using the passage as is indicated in Ex.PW3/5 and the trial court erred in denying the plaintiff the relief of permanent injunction as was prayed for”

It goes without saying that motor and bore connection was the basic necessity of the plaintiff, so as to put his land to its optimum use. It is also not pleaded or argued case on behalf of the appellants that there was some illegality conducted during the auction of land in favour of the plaintiff or they were not granted due opportunity to put up their case, if any. The learned first appellate court has specifically recorded in para 17 of the impugned judgment that judgment-debtor did not suggest anything contrary to the bidder at the time of sale of the land that motor and tubewell connection, including the machinery installed in the land, would not be sold along with land. In this view of the matter, no fault can be found with the cogent findings recorded by the learned first appellate court in the impugned judgment, which deserves to be upheld.

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the impugned judgment passed by the learned first appellate court. He also could not refer

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to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

17.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No