

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

Date of Decision: 21.11.2017

1. SAO No.73 of 2016(O&M)

Anil Kumar ...Appellant

Versus

Bhagwan Dass and others ... Respondents

2. SAO No.74 of 2016(O&M)

Anil Kumar ...Appellant

Versus

Sheela Gupta and another ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Mohd. Yousaf, Advocate
for the appellant.

Mr. Vaibhav Sehgal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Vide this common order SAO No.73 of 2016 titled Anil Kumar Vs. Bhagwan Dass and others and SAO No.74 of 2016 titled Anil Kumar Vs. Sheela Gupta and others are being disposed of. Since controversy is common in both the aforesaid cases, therefore, cumulative facts are being noticed.

[2]. Appellant has preferred these appeals against the

order dated 05.04.2016 passed by the Additional District Judge, Ludhiana vide which the matter has been remanded back to the trial Court.

[3]. Brief facts are that the plaintiff/appellant filed a suit for permanent injunction restraining the defendants/respondents, their agents, employees, servants, assignees, attorney etc from interfering or dispossessing the plaintiff forcibly and illegally from the suit property. Plaintiff asserted that he had taken the house in dispute No.260-R, Model Town, Ludhiana measuring 490 sq. yards having definite configurations in the site plan on rent from one Rachhpal Singh about 30 years ago at a monthly rent of Rs.700/-. Said Rachhpal Singh never issued any receipt regarding rent. Plaintiff learnt that said Rachhpal Singh had expired and defendants started claiming ownership over the property in question on the basis of purchase from LRs of said Rachhpal Singh. On the basis of possessory right of the petitioner, suit for permanent injunction was filed.

[4]. Before the trial Court, a counter claim was set up by the defendants against the plaintiff seeking mandate against him that he should remove his articles from the property under his occupation and deliver its possession to them. Vide order dated 27.02.2015, trial Court dismissed the suit and allowed the counter claim filed by the defendants and granted mandatory

injunction thereby directing the plaintiff to vacate the premises i.e. two small rooms, kitchen and bathroom, out of building No.260-R, Model Town, Ludhiana and to deliver vacant and peaceful possession to the counter claimants within specified time, otherwise defendants shall be entitled to get the vacant possession through process of law.

[5]. Plaintiff/appellant filed two appeals before the Lower Appellate Court against the judgment and decree of dismissal of suit and judgment and decree vide which counter claim was decreed. Lower Appellate Court vide judgment dated 05.04.2016 remanded the case to the trial Court by holding in the following manner:-

“19. The judgment and decree of the trial Court, now under appeal, clearly reveals that the name of all the defendants arrayed by the plaintiff in the suit for permanent injunction have not been mentioned in complete and name of Vishal Gupta is missing. The same happened in the decree sheet. The name of Vishal Gupta is missing. In the title of the judgment, the title of the counter claim has not been mentioned. Even in the decree, the title of the counter claim has not been mentioned. The decree for counter claim by giving the separate title of it, has not been prepared. It is thus obvious that the title of the judgment and decree are defective and have not been written as per the suit and the decree for the counter claim has not been prepared. It is obvious that defective decree and

judgment relating to the title and non preparation of the decree for the counter claim, may create ambiguity before the executing Court and may become unexecutable leading to the multiplicity of the proceedings. The title of the judgment and decree are thus not prepared in accordance with law and the decree for the counter claim has not been prepared. In these facts and circumstances of the case, if on these grounds, the issue-wise findings of the trial Court are commented upon, it may cause prejudice to any of the parties to the lis. Thus without commenting upon the findings on all the issues and preserving the right of the appellant to file appeal afresh after the judgment and decree are corrected and decree for counter claim is prepared, the title of the judgment and decree are set aside with the direction to the trial Court to correct the same as per law and also to prepare the decree for counter claim and for that limited purpose, the matter is remitted to the trial Court. The parties through counsel are directed to appear before the learned trial Court on 18.04.2016. Both these appeals thus stands disposed of in this manner. Copy of this judgment be placed on the record of the Civil Appeal No.120 of 26.03.2015. The file of the learned trial Court be returned along with a copy of this judgment. The appeal files be consigned to the Record Room.”

[6]. Against the judgment passed by the Lower Appellate Court dated 05.04.2016, present appeals came to be filed in this Court.

[7]. At the time of issuance of notice of motion on 20.10.2016, following order was passed:-

“Counsel for the appellant, inter alia, contends that the suit filed by the appellant and counter claim by the other side was decided by the trial Court on 27.02.2015 and the same was challenged in appeal by Shri Anil Kumar on 26.03.2015. However, during pendency of appeal before the first appellate Court, the respondents filed an application in July 2015 before the trial Court for making correction in the judgment and decree passed by the trial Court but the same was dismissed on 06.01.2016. A similar application was filed before the Court of appeal on 09.03.2016 and the same has been wrongly allowed by the Court of appeal and remitted the matter to the trial Court. It is vehemently argued that the order passed by the trial Court refusing to correct the judgment and decree can be challenged by way of revision before this Court, therefore, the application filed by the respondents for the same relief before the Court of appeal was not sustainable.

Notice of motion for 16.01.2017.

Meanwhile, proceedings before the trial Court would be subject to final outcome of the present appeal.

Photocopy of this order be placed on the file of connected case.”

[8]. I have heard learned counsel for the parties and have also perused the relevant record.

[9]. It can be noticed from the record that the trial Court decided the suit and counter claim vide judgment and decree dated 27.02.2015 and against the aforesaid judgment and decree of the trial Court, the Lower Appellate Court accepted the appeals and remanded the case to the trial Court vide judgment dated 05.04.2016 for the purpose of correction in decree-sheet and for preparing decree-sheet in the counter claim.

[10]. After the remand, the judgment of remand was implemented by the trial Court. Correct decree-sheet has been prepared in compliance of the remand made by the Lower Appellate Court. After the necessary correction, judgment and decree was passed by the trial Court on 19.08.2016. The present appeals have been preferred against the judgment dated 05.04.2016 passed by the Lower Appellate Court vide which the matter has been remanded back to the trial Court. The aforesaid judgment dated 05.04.2016 has already been implemented by the trial Court vide judgment and decree dated 19.08.2016 and against the said judgment and decree, an appeal has already been preferred before the Lower Appellate Court wherein interim stay was refused by the Lower Appellate Court on 17.03.2017. An application under Order 41 Rule 5 CPC was dismissed.

[11]. Civil Revision No.2102 of 2017 titled Anil Kumar Vs. Bhagwan Dass and others was filed in the High Court and the same was allowed on the basis of statement made by learned counsel for the respondents that the prayer for interim injunction during pendency of first appeal before the Lower Appellate Court be allowed and the respondents will not execute the decree passed in their counter claim till disposal of the appeal before the Lower Appellate Court. On the basis of aforesaid consensus, revision petition was allowed and the order dated 17.03.2017 passed by the Lower Appellate Court was set aside. However, it was observed that the Lower Appellate Court shall make every endeavour to decide the appeal at the earliest in accordance with law. Second Civil Revision No.2169 of 2017 titled Anil Kumar Vs. Sheela Gupta and another was also disposed of in the same terms and conditions on the basis of statement of learned counsel for the respondents.

[12]. Perusal of the record shows that the present appeals were filed on 30.08.2016 i.e. after the implementation of the remand order dated 05.04.2016 by the trial Court on 19.08.2016.

[13]. In view of above, the present appeals have been rendered infructuous as the matter is subjudice before the Lower Appellate Court. Appellant would be at liberty to take

recourse to his remedies available to them in accordance with law.

21.11.2017

prince

Whether Reasoned/Speaking

Whether Reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No