

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.62 of 1992 (O&M)

Date of decision: 03.04.2018

Jaspal Singh and others

..... Appellants

Versus

Balwant Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. M.L. Sarin, Sr. Advocate with
Mr. Ritesh Aggarwal, Advocate
for the appellants.

Mr. Himanshu Rao, Advocate, for
Mr. J.S. Chahal, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

At the outset, learned counsel for the appellants has pointed out that the learned First Appellate Court has not even dealt with the contentions/submissions of learned counsel for the appellants even after noticing the same.

The arguments of learned counsel before the learned First Appellate Court have been noticed by the Appellate Court in the following manner:-

“Mr. V.K. Sareen the learned counsel for the appellant vehemently argued that findings recorded by the trial Court by applying the principles of res judicata to the present case is contrary to the facts of the case as well as to the law, as the

plaintiffs/appellants were never a party in the present litigation. Therefore, the judgment of the appellate Court being not inter-parties is neither relevant nor admissible. The plaintiffs/appellants' claim was independent. The decree Ex.P-16 are binding on the estate of Santa Singh. These are consent decrees, therefore, the defendants are bound by the appeal and his legal representatives were not brought on record. Thus principles of res judicata would not be applicable or attracted to the facts of the given case in hand. The plaintiffs, are therefore within their right to claim their ownership over the properties on the basis of will executed by the original owner i.e. Santa Singh, their grand father and judgment and decree suffered by Santa Singh in favour of plaintiffs No.1 to 3 on 22.11.1974 and the judgment and decree dated 19.4.1975 to the extent of 1/4 share in the haveli in favour of plaintiff No.4 and 5, certified copies of the judgments are Ex.P16 to P-19. Site plan of the properties are Ex.P-1 to P-4. Ownership of Santa Singh was fully reflected from the revenue record Ex.P-26 to P-37. It was also contended that the defendants cannot derive any benefit from the documents i.e. judgment Ex.PZ/1 and decree Ex.DZ/2.”

After noticing these submissions, learned First Appellate Court has concluded as under:-

“I have taken into consideration these points, but there is hardly any force in it. As regards the will, the same was declared invalid, by the Appellate Court in judgment Ex.DZ and Ex.DZ/1, therefore the appellants cannot derive any benefit from the factum of execution of the will which, though was accepted by the court of Shri A.K. Sharma, Sub-Judge vide judgment Ex.DZ but it was set aside by the Appellate Court vide judgment Ex.DZ/1. No second appeal was preferred against the judgment of the Appellate Court Ex.DZ/1. Therefore, the same is to be accepted as final. Haveli which is the subject matter of the dispute was also held to be jointly owned by all the sons of Santa Singh and decree of possession of 2/5 share of the haveli by partition was passed. Emphasis was also laid on the point that haveli was the

self acquire property of Santa Singh, but there is hardly any merit in this submission on the face of numerous documents placed on record which have been discussed at length by the learned trial Court one by one. The findings of fact, recorded by the trial Court do not call for interference. Rather it would amount to repetition of facts and evidence on record has been discussed in extenso by the trial Court. Hence, findings of the trial Court on all the issues are hereby affirmed.”

It is clear from the conclusion drawn that the learned First Appellate Court has not even dealt with the submissions made by learned counsel for the appellants. Learned First Appellate Court has decided the first appeal in a cursory manner. The Court has referred to the judgment of the learned First Appellate Court is Ex.DZ and Ex.DZ/1 whereas ExDZ is a judgment passed by the learned trial Court on 17.10.1980 whereas the judgment passed by the learned First Appellate Court is Ex. DZ/1.

Learned counsel for the appellants taken this Court through the judgment passed by the learned Appellate Court dated 17.02.1983 DZ/1. He has pointed out that in the aforesaid appeal, the appellants were not party. He has submitted that since the appellants were not party, the judgment cannot operate as res judicata.

Taking into consideration the submission made, this Court is of the view that the learned First Appellate Court should be directed to re-decide the matter after discussing the submissions made by learned counsel for the parties and after examining the evidence available on the file. Therefore, without expressing any final opinion on the merits of the case, the judgment passed by the learned First Appellate Court dated 28.08.1991 is set aside. The case is remanded back to the learned First Appellate Court to re-decide the appeal in accordance with law preferably within a period of

six months.

Parties through their counsel are directed to appear before the learned District Judge, Jalandhar on 14.05.2018 at 10.00 AM.

Learned District Judge shall be at liberty to hear the appeal himself or assign it to competent Court of jurisdiction.

Regular Second Appeal is allowed.

03.04.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No