

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

206

RSA-1661-2010 (O&M)
Date of decision: 28.09.2018

HARDAM SINGH AND ORS.

... Appellants

Versus

STATE OF HARYANA AND ORS.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Balwinder Singh, Advocate for the appellants.

Mr. Indresh Goel, Addl. A.G., Haryana.

Mr. Brijender Kaushik, Advocate for respondents No.7 and 8.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against judgment and decree dated 23.02.2010 passed by the Additional District Judge, Ambala whereby Civil Appeal No.41 dated 04.05.2009 against the judgment and decree dated 02.04.2009 passed by the trial Court has been allowed, impugned judgment and decree were set aside and suit filed by the appellants/plaintiffs is decreed with costs.

On 10.08.2018, order passed by this Court, reads as follows:-

“Counsel for respondents No.7 and 8 would apprise the Court that the appellate Court has decreed the suit filed by the plaintiffs but still they have preferred an appeal, therefore, the moot question arises with regard to maintainability of the appeal.

Counsel for the appellants prays for time to assist the Court.

List on 24.09.2018.”

Counsel for the appellants would fairly concede that as appeal preferred by the appellants was allowed by the First Appellate Court and suit filed by the plaintiffs for declaration in respect of land, detailed in head note of the plaint, was decreed, the present appeal is not maintainable even if certain findings have been recorded against the appellants by the Court in appeal. However, he would submit that any findings recorded by the Court in appeal which are beyond the controversy raised in the suit would not constitute res judicata against the appellants.

Counsel representing respondents No.7 and 8 has submitted that as the Appellate Court has decreed the suit, the present appeal is not maintainable nor the appellants can maintain an appeal against their co-plaintiffs.

Without examining the issues raised by the parties which are alien to question of non-maintainability of the appeal, the present appeal is dismissed being not maintainable, leaving the parties to bear their own costs.

28.09.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No