

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102

RSA No.4512 of 2013 (O&M)

Date of decision: 13.03.2018

Mohinder Pal

..... Appellant

Versus

Raksha Devi

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. K.S. Dadwal, Advocate for the appellant.

Mr. Onkar Rai, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the judgments passed by both the Courts below.

Plaintiff filed a suit for possession and recovery of mense profit from 01.01.2001 to 31.12.2003. The defendant herein filed a suit for declaration claiming that he is owner in possession. In the aforesaid suit, defendant No.1 who is plaintiff-appellant in the present case filed a counter claim claiming mandatory injunction and in the alternative, decree for possession. In the previous suit, the issues No.2, 3 and 4 were framed which are extracted as under:-

“2. Whether defendant No.1 is the owner in possession of the suit property and if he has agreed to sell the same to defendant No.2 vide agreement dated 28.4.1998? OPD

3. Whether the counter-claim of defendant has been properly valued for the purposes of court-fee and jurisdiction? OPD

4. Whether the counter-claim is liable to be decreed?OPD”

Ultimately, the learned trial Court in the previous suit returned a finding dismissing the suit filed by the defendant-respondent herein as

also the counter claim filed by the plaintiff-appellant. The finding recorded by the Court is as under:-

“ISSUE NOS.2, 3 & 4

These issues are inter-connected and inter dependent, hence taken up together in order to avoid repetition in discussion. The onus of providing all these issues was upon the defendants, but no evidence has been led by the defendants in order to prove all the assertions as contained in their written statement. Consequently, answering defendants have failed to discharge the onus of proving these issues. Hence, these issues are decided against the defendants and in favour of the plaintiff, for want of evidence.”

Thereafter, plaintiff-appellant did not challenge the aforesaid judgment and decree. The decree passed by the Court on 17.01.2002 became final between the parties. The plaintiff-appellant now filed a fresh suit claiming possession. Both the Courts dismissed the suit although giving different reasons.

In the considered opinion of this Court, subsequent suit filed by the plaintiff for possession is not maintainable in view of the fact that earlier the plaintiff-appellant had filed a counter claim which was tried as a suit for the same relief and the same was dismissed on merits on the ground that the plaintiff-appellant (defendant-counter claimant in the earlier suit) had failed to lead any evidence.

In view of the aforesaid position, this Court does not find any good ground to interfere with the judgments passed by the Courts below.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

13.03.2018
Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No