

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2682 of 2015 (O&M)
Date of Order: 17.09.2018

Ram Chander and another

..Appellants

Versus

Rajinder and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Avnish Mittal, Advocate,
for the appellants.

Mr. Rajesh Lamba, Advocate,
for respondents no.1 to 3.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the judgments passed by the courts below.

From reading of the judgment passed by learned first appellate court, it is apparent that the learned first appellate court had only extracted relevant findings of the learned trial court which is extracted for reference:-

“25. I have perused the judgment of the Trial Court. The trial court while disposing of Issue No.1 has held as under:-

“Perusal of the jamabandi for the year 1951-52 Ex.P15 reveals that Khewat NO.192 min. is recorded in Khatoni No.501 to 509 and in Khatoni No.504 Kamla and Gokal Co-sharer shown in possession in equal share over the land bearing khasra No.1547 (0-10) along with

other land bearing Khasr aNo.2260, 1128,2345, 1752. Mutation No.2305 entered and sanctioned in respect of land measruing (0-5) biswa in favour of Nahanta s/o Dhani, Parbhati, Hoshiyare Ss/o Nand Lal, 2/3rd share in equal share. In the top of the mutation in column no.6. Khasra No.1547 (0-15) is recorded. No other record of remaining 10 marlas of the land of khasra no.1547 produced on the case file by the parties to the suit. In jamabandi for the eyar 1962-63 Nahanta S/o Ganga Ram S/o Khayali shown in possession of Khasra No.172 gair mumkin Gher measuring 1 kanals 6 marlas allotted in exchange of previous number 1547/2 and in exchange of 1547, 1 new number 171 was allotted to Suraj Mal and the land bearing kahsra no.81/21/2. 83/1, 84(4/2) 5, and 816 was allotted to Nahanta s/o Dhani. In consolidation proceedings also, khasra no.172 allotted to Nahanta son of Ganga Ram in exchange of old khasra no.1547/2 along with other numbers and khasra no.51/10/1 was allotted to Hosiyare, Prabhati s/o Nand Lal in equal share in exchange of old khasra no.505, 576, 577. New Khasra No.50(6/2) was allotted to Nahanta son of Dhani in exchange of old No.505, 576, 577. As per copy of proceedings register of consolidation new khasra No.172(1-6) along with new khasra no.328, 57(2-1), 26/1, 26(2/1), 23/1, 24, 25, 9, 12,18/1, 19, 89/6 was allotted to Nahahta son of Ganga

Ram son of Khayali and new khasra no.445, 815, 51, 10, 52(7/2), 8/1,14/1 was allotted to Hosiyare. Parbhati son of Nand Lal in equal share of khasra no.355, 816, 50/6, 83/1, 84/4, 2, 5 was allotted to Nahanta son of Dhani. In Jamabandi for the year 2003-04, Rajinder etc. shown owner in possession to the extent of half share over the khasra no.172(1-6). Rampal son of Khusia recorded owner in possession to the extent of half share and S,t. Ved Kaur widow.. Sanjit, Krishan and Raj Kumar sons of Matu Ram, co-sharer in Shamlat. Thus, the defendants have no concern and connection with the ownership and possession of the plot in dispute as the same was not allotted to them in consolidation holding in village.

Moreover, the application under Section 42 of Consolidation Act, 1948 filed by Ram Chander against the present plaintiff was dismissed by the Commissioner, Rohtak vide order Ex.P6. In that application the similar plea taken in the written statement was pleaded by the Ram Chander defendant in the present case. In which it was held that both parties had purchased land from old khewat no.192 and area was allotted to both parties as per their demand at the time of consolidation in the village and no irregularity was found in the record. In view of the above said order passed by the Ld. Commissioner on the application filed

by Ram Chander defendant it is proved that there is no irregularity in the revenue record and the plea taken by the defendant that after consolidation name of father of Nahanta son of Ganga Ram was wrongly written in place of Nahanta son of Dhani.

From the above discussion and the revenue record placed on file by the plaintiff in the shape of exhibits, plaintiffs have able to prove that they are owner of the plot in dispute and defendants have no concern and connection with the ownership of the plot in dispute. It is admitted by the PW-2 Rampal Singh, vendor of plaintiff that on short portion of this plot houses were constructed by the defendants construction of the defendants not denied by the plaintiff when appeared in witness box. Thus, plaintiffs are not in possession of whole khasra no.172(1-6) as the houses of defendants are also constructed as shown in map Ex.D1. Besides the construction shown in Ex.D1 defendants have no concern with remaining land of khasra No.172. Therefore, defendants have no right to interfere in the peaceful possession over the suit land except construction raised by them. Hence, the above said issue is hereby decided accordingly in favour of plaintiffs and against the defendants.

In view of the above discussion and finding on issue No.1, plaintiffs are entitled for injunction as

prayed, defendants are liable to be restrained from interfering in the peaceful possession of plaintiffs over the property in dispute, i.e. vacant area of plot No.172. Therefore, the above said issue is hereby decided in favour of plaintiffs and against the defendants.”

Thereafter, first appellate court affirmed the finding while recording, thus, in paragraph 26, which is extracted as under:-

“26. I have given thoughtful consideration to the contentions canvassed at the bar. However, I am of the considered view that there is no force in the contentions canvassed on behalf of the appellants. The Trial court has discussed the matter in issue in detail and has pointed out the falsity in the contentions raised on behalf of the Appellants. The Commissioner, Rohtak Division, Rohtak, in his order dated 24.11.2010 (Ex.P6) has pointed out that there is no force in the contentions raised by the Appellants. Accordingly, I hereby affirm the findings of the Trial Court on this issue.”

First appellate court is a last court for re-appreciating the evidence and record a finding of fact. First appellate court is expected to re-examine the evidence led by the parties and thereafter critically analyze the reasons given by the trial court and affirm or reverse the finding of the trial court.

In the present case, it is apparent that the learned first appellate court has failed to discharge its duty. Section 96 of the Code of Civil Procedure makes it obligatory for the first appellate court to re-analyze the

evidence and thereafter deal with contentions raised before it before arriving at a finding.

From the reading of the aforesaid para extracted above, it is apparent that learned first appellate court has failed in its duty.

Keeping in view the aforesaid facts, case is remitted back to the learned first appellate court, who has to re-decide the appeal within 3 months from the date of receipt of copy of the judgment.

Parties through their counsels are directed to appear before the learned first appellate court, on 01.10.2018.

Parties shall maintain status quo till they appear before the learned first appellate court.

Needless to say that this court has not expressed any opinion on merits and the learned first appellate court would be at liberty to arrive at an independent finding on re-appreciation of evidence.

September 17, 2018
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(ANIL KSHETARPAL)
JUDGE

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