IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4986 of 2016
Date of Decision.21.05.2018

Techman Estate Pvt. Ltd. ...Appellant

Vs

Birma Devi and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. M.S. Rana, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The present regular second appeal is directed against the judgments and decrees rendered by the Courts below whereby the suit of the appellant-plaintiff for declaration with consequential relief of injunction has been dismissed.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. M.S. Rana appearing for the appellant submitted that the plaintiff had instituted the suit on 14.05.2011 by challenging the judgment and decree dated 26.08.1991 of the trial Court, judgment and decree dated 17.10.1995 passed by the lower Appellate Court and judgment dated 19.5.1998 passed in RSA No.1492 of 1996 of this Court, for, the appellant-plaintiff was not party in the suit filed under Order 1 Rule 8 CPC. Though the declaration was sought on the basis of the ownership, the trial Court dismissed the suit without adverting to the oral and documentary evidence but the lower Appellate Court being the last court of fact and law was enjoined upon an obligation to decide the appeal filed under Section 96 CPC by determining points

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of determination as envisaged under Order 41 Rule 31 CPC. It failed to advert to even documentary evidence despite the fact that the contesting respondents were ex parte. Even additional evidence brought on record had also not been adverted to in the corrective perspective.

I have heard learned counsel for the appellant, appraised the paper book and of the view that it is a fit case where the mater requires to be revisited. It would be farcical exercise in summoning the respondents as they were ex parte, in view of the provisions of Order 41 Rule 14(4) CPC. The same is reproduced as under:-

> *"14.* ***Publication and service of notice of day for hearing appeal.-***
>
> *xxxx* *xxxx* *xxxx*
>
> *(4) Notwithstanding anything to the contrary contained in sub-rule (1), it shall not be necessary to serve notice on any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal.*
>
> *xxxx* *xxxx* *xxxx"*

The lower Appellate Court without referring to any oral and documentary evidence on record or determining points of determination in a most mechanical and fallacious manner dismissed the appeal. It was obligatory to advert to the documentary evidence for deciding the controversy. The appeal has been dismissed in a most casual manner probably on the premise that the defendants-respondents were ex parte.

Without commenting upon merits and demerits of the matter, I set aside the judgment and decree of the lower Appellate

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Court and remit the matter to decide afresh in accordance with keeping in view the observations made herein above.

The regular second appeal is disposed in the above terms. The lower Appellate Court may endeavour to summon the respondents afresh in compliance of the principles of fair play and justice. The lower Appellate Court would undertake to effect service on the contesting respondents afresh before the deciding the appeal in pursuance of the order passed by this Court.

(AMIT RAWAL)
JUDGE

May 21, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No

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