

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.5808 of 2016 (O&M)

Date of decision: 10.08.2018

The Scheduled Caste Co-op. Land Owning
Society Ltd.

..... Appellant

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Krishan Singh, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-15251-C-2016

Application is allowed and the delay in re-filing the appeal is
condoned.

Main Case

Plaintiff-appellant is in the regular second appeal against the
judgment passed by the learned trial Court and the order passed by the
learned First Appellate Court.

No doubt, technically the appeal has not been decided by the
learned First Appellate Court in accordance with law. However, keeping in
view the controversy involved, this Court is of the opinion that the
appellant be granted opportunity to argue the appeal as if it is First
Appellate Court.

Learned counsel for the appellant has submitted that he had
filed an application under Order 41 Rule 27, CPC for permission to produce

in additional evidence a Register of its members. He further submitted that the application filed before the learned First Appellate Court by Union of India has not been decided also.

Some facts are required to be noticed. The plaintiff-society has filed a suit claiming that they are owner in possession of 99 bighas and 4 biswas of land. They have claimed that the entire amount of sale consideration has been deposited during the pendency of the suit. State of Punjab contested the suit and pleaded that the land is reserved for the activities of Indian Army and there is no allotment in favour of the society. Learned trial Court granted opportunity to both the parties to lead the evidence, however, the plaintiff-society could not produce any evidence to prove that the land in question was ever allotted to the society or its members. Hence, the suit was ordered to be dismissed. During the pendency of the first appeal, the plaintiff-appellant filed an application for permission to withdraw the appeal with liberty to file a fresh suit on the same cause of action. The aforesaid application was dismissed but the learned First Appellate Court inadvertently dismissed the appeal also. That is how this Court has observed that the learned First Appellate Court has committed an error.

Learned counsel for the appellant even during the course of arguments before this Court could not draw attention of the Court to any evidence which may even remotely suggest that the land in question was ever allotted to the plaintiff-society. As regards the application for additional evidence, it will be noted that by way of additional evidence, the plaintiff only wants to produce its own “register of members”. That is not going to help the appellant because the appellant has to prove that the land

was ever allotted to them which can only be proved by an allotment letter issued by the competent authority which they have failed to do so.

Next argument of learned counsel is that the application was filed by the Union of India for being impleaded as party which has also not been decided. On careful reading of the application, it is apparent that the ownership of the suit property vested with the Ministry of Defence, as per letter dated 16.01.1950 and in the ownership column of the revenue record also, the property is recorded to be owned by the Union of India. Even State of Punjab has filed the written statement admitting that the property is kept reserved for the activities of Indian Army and other defence purposes. Such being the position, this Court while exercising extra-ordinary jurisdiction have chosen to exercise the jurisdiction of the learned First Appellate Court and chosen to decide the appeal.

In view thereof, there is no scope for interference with the orders passed by the Courts below.

Appeal is dismissed.

10.08.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No