

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

**RSA No.6989 of 2016 (O&M)
Date of Decision : 08.05.2018**

Harmeet Singh

.....Appellant

Versus

Dilawar Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.R.K.Arya, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant/plaintiff was decreed by the trial Court vide judgment and decree dated 15.02.2012. However, the appeal preferred by respondent No.1 (Dilawar Singh), against the said decree was accepted by the Ist Appellate Court, vide judgment dated 10.09.2013, the decree passed by the trial Court was set aside, and the suit was dismissed. This is how, the appellant is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Briefly, the plaintiff filed a suit for recovery of Rs.1,00,000/- by way of damages. His case was that he along with his brother Amandeep Singh was the owner of a land measuring 34 kanals 10 marlas, that formed part of a larger chunk, measuring 81 kanals 14 marlas. He filed an application for partition before the Tehsildar on 12.01.2005, which was accepted on 24.09.2007, and shares of the plaintiff and his brother were separated. Even though, defendant No.1,

had no right title or interest in the suit property, but yet he was impleaded as party to the partition application. Possession, pursuant to the partition, was delivered to the plaintiff and his brother on 4.01.2008, and the defendants had due knowledge thereof. Even though, defendant No.1, sold the land that was allotted to him in the partition proceedings, but the defendants in connivance with each other, and with an intent to cause monetary loss to the plaintiff filed an appeal against the order dated 24.09.2007, and obtained a stay order against the plaintiff. However, the appeal was subsequently dismissed on 11.01.2008, but as a consequence of the said proceedings, the plaintiff suffered a loss.

Though, as indicated above, the suit was decreed by the trial Court. However, on a consideration of the matter in issue and the evidence on record, the first Appellate Court reached a conclusion that although perusal of the appellate order dated 11.08.2008 (Ex.P4), passed in the partition proceedings, showed that the appeal was filed by the defendants but Dilawar Singh (defendant No.1) in his written statement as also in his deposition denied having filed any such appeal. Thus, in the situation, the plaintiff ought to have either produced a copy of the grounds of appeal duly signed or thumb marked by defendant No.1 or summoned the necessary record to prove his case. Even the counsel, who allegedly represented defendant No.1, was not examined. Therefore, simply because name of defendant/appellant was mentioned in the order dismissing the appeal, it was not enough to conclude that any such appeal was indeed filed by defendant No.1, against the order dated

24.09.2007, passed by the Collector. Further, the plaintiff failed to lead any evidence to show if he actually suffered any damages owing to the filing of the said appeal. Though, his case was that he suffered loss in his agriculture work and dairy farming, but again no evidence was led to show if he was actually involved in any such business. Nothing was brought on record either to show the basis upon which he calculated the damages and made a claim. Likewise, though, the case set out by the plaintiff was that the ground set out in the appeal, preferred by the defendants, were false and therefore, they were liable for damages, but a copy of the grounds of appeal was never produced to show as to what exactly was pleaded by the defendants. Accordingly, the Appellate Court reversed the finding recorded by the trial Court.

On being pointedly asked, learned counsel for the appellant/plaintiff could not refer to anything on record if the conclusion reached by the Appellate Court was either contrary to the record or suffered from any material illegality. Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly, dismissed.

08.05.2018

*Manoj Bhutani***(ARUN PALLI)****JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No