

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

RSA No.594 of 2015 (O&M)
Date of decision: 11.12.2018

Gopi Chand (since deceased) thr his LRs

... Appellants

Versus

Partap Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. P.R. Yadav, Advocate
for the appellants.

Mr. Nitin Jain, Advocate
for respondents No.1 to 3.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for partition in respect of land measuring 9 kanal 1 marla, situated in village Bohra Kalan, Tehsil and District Gurgaon, detailed in para 2 of the judgment of trial Court filed by the respondents/plaintiffs was decreed by the trial Court vide judgment and decree dated 24.12.2012.

The appeal preferred by Gopi Chand (since deceased) through his LRs was dismissed by the District Judge, Gurgaon vide judgment and decree dated 03.03.2014.

Counsel for the appellants would argue that in the suit, no issues were framed by the trial Court pertaining to the matter in controversy

but in the original records at page 45, there is an order dated 13.12.2012 making reference to certain issues but these issues pertain to some other suit relating to regularization of services and qualifying service etc. It is further argued that as the trial Court did not frame any issue(s) much less any issues before the parties were called upon to produce evidence, the judgments and decrees passed by the Courts cannot be allowed to sustain and liable to be set aside. It is prayed that the matter may be remitted to the trial Court for decision of the case afresh after framing of issues and providing an opportunity to the parties to adduce evidence.

Counsel for respondents No.1 to 3, on the contrary, would urge that procedural technicalities cannot be allowed to be pitted against substantial justice. It is further argued that even if there was some mistake on the part of trial Court for its failure to frame issues or non-framing of issues before the parties were called upon to adduce evidence, as the parties knew their case well and adduced evidence in support of respective contentions raised in the pleadings, in absence of the appellant proving any prejudice for failure to frame issues, his contention cannot be accepted. However, he has fairly conceded that the issues framed by the trial Court on 13.12.2012 pertain to some other case involving service matter.

I have heard counsel for the parties, perused the paper book and records.

Perusal of the zimini orders recorded by the trial Court w.e.f. 03.06.2006 till 24.12.2012, makes evident that the trial Court did not frame

any issues in view of the rival contentions raised by the parties in their respective pleadings. The case remained pending for service of defendants till 17.08.2011 and the same was adjourned for ex parte evidence of the plaintiffs to 25.11.2011. Later, an application was filed by defendants No.1 to 10 for setting aside the ex parte order and the same was allowed by the trial Court vide order dated 24.05.2012 and the case was adjourned to 12.06.2012 for evidence of the plaintiffs. The plaintiffs concluded their evidence on 16.10.2012 and thereafter the defendants were called upon to produce their evidence. The defendants closed their evidence on 06.12.2012 and the case was adjourned to 13.12.2012 for evidence in rebuttal and arguments. No evidence in rebuttal was produced on 13.12.2012. On the day, the Court passed another order dated 13.12.2012 framing issues No.1 to 6 and in the order, it has been noticed that in the present case inadvertently issues are not framed. It is conceded position of the case that the issues which were framed on 13.12.2012 pertain to some service matter with regard to regularization of services or qualifying service etc. However, there is reference to the case titled Partap Vs. Gopi Chand in the heading of said order. It is a mystery as to how the trial Court in the judgment has made reference to issues pertaining to the present suit without their being a zimini order framing the issues, reproduced in para 9 of the judgment of trial Court. As the issues framed on 13.12.2012 available on records of the trial Court pertain to some other case and the issues, reproduced in para 9 of the judgment are not a part of records, it can safely

be held that the trial Court decided the suit without framing issues. The matter would have been different that even after parties have adduced their evidence, the Court had found that issues were omitted to be framed at an appropriate stage, the Court had framed the issues and provided an opportunity to the parties to adduce evidence after framing of issues. In this case, as the Court never framed any issues on the basis whereof the parties could adduce their evidence and make their submissions, prejudice to the appellant is writ large, therefore, the judgments passed by the Courts cannot be allowed to sustain and liable to be set aside. The appellate Court should have remitted the matter to trial Court while deciding the appeal and in the process, parties would have been saved from filing an appeal before this Court. In view of the above, I find merit in contention of the appellants that impugned judgments cannot be allowed to sustain and the matter needs remittance to the trial Court for decision afresh.

In view of what has been discussed hereinabove, the appeal is allowed. Judgments and decrees passed by the Courts are set aside. The matter is remitted to the trial Court for decision afresh after framing issues and providing opportunity to the parties to adduce evidence. The trial Court would be at liberty to take into consideration the evidence already adduced by the parties. Parties are directed not to repeat the evidence already adduced by them before the trial Court. Any miscellaneous application filed before the trial Court would be decided by the Court, in accordance with law. Parties through their counsel are directed to appear before the trial

Court on 03.01.2019. The trial Court is directed to dispose of the suit within four months of the parties putting in appearance.

11.12.2018
ashok

(REKHA MITTAL)
JUDGE

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