

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No.63 of 2016 (O&M)
Date of decision : May 22, 2018

Sadhu Ram

..... Appellant

Versus

Vidya Sagar

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. J.S. Lalli, Advocate for the appellant.

Mr. Rakesh Gupta, Advocate for the respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

Impugned in the present second appeal against order is the judgment dated 26.07.2016 passed by learned Addl. District Judge, Ludhiana, whereby the appeal was allowed and the cross-objections were dismissed and the case was remanded back to the trial Court for directing the plaintiff to implead Sukhdev Singh son of Gurbax Singh as party to the case and thereafter, the Court shall proceed further as per law. It was further directed that in case, the plaintiff fails to implead Sukhdev Singh son of Gurbax Singh as party within one month from the date fixed before the trial Court, then the suit of the plaintiff shall stand dismissed.

Against the said order, the plaintiff has come up in the present appeal.

The plaintiff had filed a suit for joint possession before the

learned Civil Judge (Jr. Divn.), Jagraon, claiming joint possession of land measuring 1 kanal, 9 marlas, situated at Raikot, District Ludhiana. He also claimed mesne profits. The plaintiff also claimed that he is owner of land measuring 5 kanals, 5 marlas, bearing Khewat/Khatauni No.739/809, Killa No.22/1, as per jamabandi for the year 2002-03, situated at Raikot, District Ludhiana. The defendant is the owner of Raikot Gas Agency and constructed a godown in the land measuring Khewat/Khatauni No.635/720, Rect.151, Killa No.23, as per jamabandi for the year 1982-83. It was further claimed that defendant has got the land on lease from on Gurbax Singh, vide registered lease deed 02.02.1989.

The plaintiff claimed that vide order dated 28.01.1987, the Addl. Director Consolidation of holding, Jalandhar, the land measuring 5 kanals, 5 marlas of Rect. No.151, Killa No.22/1 was withdrawn from the ownership of Gurbax Singh etc. and allotted to the plaintiff. The plaintiff further claimed that the defendant had encroached upon land measuring 1 kanal, 9 marlas, which is part of the land measuring 5 kanal 5 marlas, out of Rect. No.151, Killa No.22/1.

However, the defendant had denied the said encroachment.

The trial Court came to the conclusion that the land measuring 1 kanal, 9 marlas is shown in possession of Gas Agency. The land is taken on lease by the defendant, which is regarding Killa No.12 and 23 only.

Defendant claimed that he is in possession of suit land and on the other hand, he admitted that the land measuring 1 kanal 9 marlas comprised in killa No.22/1 is in his possession. The Local Commissioner also found that the land measuring 1 kanal, 18 marlas was in possession of

defendant-Vidya Sagar. The defendant had constructed a godown over the land measuring 3 kanal 14 marlas. Consequently, the suit of the plaintiff was decreed for possession of land measuring 1 kanal 9 marlas, bearing Khasra No.22/1.

Aggrieved by the said judgment and decree, the defendant went in appeal. In the appeal, the lower appellate Court noticed that Gurbax Singh and Sukhdev Singh are lessors of defendant Vidya Sagar. Therefore, Gurbax Singh and Sukhdev Singh certainly have right in the disputed property and without impleading Sukhdev Singh as party, the matter cannot be adjudicated upon.

I have heard learned counsel for the parties and have also carefully gone through the case file.

I am of the view that in this case, the lower appellate Court found that the suit is bad for non-joinder and necessary party. The defendant is merely a lessee. He claimed to have taken lease from the original owner. Therefore, without adding the original owner, the suit for possession against the lessee is not maintainable. The lower appellate Court in place of allowing the appeal, remanded the case to the trial Court while granting relief to the respondent-plaintiff by allowing him to implead the original owner Gurbax Singh, as party and then get the matter decided.

I fully agree with the view taken by the learned Addl. District Judge, Ludhiana, that in a suit for possession, the original owner is a necessary and proper party. The defendant in this case is merely a lessee. The decree of possession, if any, has to be passed against the person found in illegal possession of the land. There was a dispute regarding the

ownership of the land also.

As such, it was rightly held that the person from whom the defendant had taken the land on lease, is/are proper and necessary party/parties. Therefore, there is no illegality or infirmity in the impugned order.

Hence, the present second appeal against order is dismissed. Since, the main appeal has been dismissed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

May 22, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No