

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.1734 of 2017 (O&M)
Date of Decision : 07.08.2018

Rattan Singh Appellant

Versus

Kashmir Singh Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Gagandeep Singh Sirphikhi, Advocate
for the appellant.

Ms. Satpreet Grewal Kapila, Advocate
for the caveator-respondent.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the courts below decreeing a counter-claim filed by the respondent.

At the very outset, it may be noticed that originally the appellant had filed a suit claiming that he was in possession of a shop in dispute and at one stage the defendant-Municipal Corporation, Gurdaspur had decided to allot the same to him but that was cancelled by the defendant-Improvement Trust illegally (after the area came under the Improvement Trust). The case of the respondent on the other hand was that one Deva Singh had come as a refugee from Pakistan and actually he had been allotted the property in dispute over Nazool land where he had built a shop. At one stage, earlier there was a tin verandah outside the shop. Subsequently he had taken permission to amalgamate that tin verandah. It

allot the property in favour of the appellant had to be aborted because the property stood allotted in the name of Deva Singh and Deva Singh had executed a Will in favour of the brother of the appellant. As regards the possession of the appellant, it was stated that Deva Singh was a bachelor who used to live with the brother of the appellant and during his declining years the appellant had been inducted to help him and to earn some income. It was further pleaded that Deva Singh had executed a Will in favour of the third defendant i.e. the respondent. The third defendant i.e. the respondent filed a counter-claim also claiming that the property had been allotted to Deva Singh and further asserting that Deva Singh had validly executed a Will in his favour and that a decree of possession be given. It is noteworthy that the appellant withdrew his suit, thus withdrawing his entire claim that at any stage there was a proposal to allot the property to him or that he was in possession independently or that Deva Singh had no right to execute a Will etc. Both the courts below having decreed the counter claim, the appellant is before this Court.

The first argument raised by the counsel is that the allotment in favour of Deva Singh was never proved. It is true that the respondent did not place on record the actual allotment of the Nazool land which may have taken place in the year/s succeeding the partition but otherwise there was overwhelming evidence to show that the property was in possession of Deva Singh. In the assessment register, he is shown as allottee. In the house tax register, he is shown as allottee. There are plans and sanctions which show him as 'allottee'. There was evidence from the bank that he paid rent to the Municipal Committee vide receipts Ex.D15 to Ex.D36 from 1955 to 1998

i.e. for 44 years. I have thus no hesitation in upholding the finding that Deva Singh was the allottee.

The second argument raised by the counsel is that one additional issue i.e issue No.7A was framed which was never decided. He has relied upon the judgment of this Court in the matter of ***Jasbir Singh vs. Sukhwinder Singh, 2014(46) R.C.R.(Civil) 479*** where originally six following issues were raised:-

- “1. Whether the plaintiffs and his brother Kulwinder are owners in possession of the suit property? OPP*
- 2. Whether the sale deed allegedly executed by defendant in favour of plaintiff and his brother are legal or valid?OPP*
- 3. Whether the defendant is of unsound mind was not competent to execute alleged sale deed in favour of plaintiff and his brother?OPP.*
- 4. Whether the partition taken place on 18-08-2004?OPP.*
- 5. Whether the plaintiff has no locus standi to file present suit?OPD.*
- 6. Relief.*

But thereafter two new issues i.e. 5-A and 5-B were also struck which are as under:-

- “5A. Whether the plaintiff is entitled to possession of land measuring 35 kanals 4 Marlas?OPD.*
- 5B. Whether suit is bad for mis-joinder and non-joinder of necessary parties?OPD.”*

The trial court decided the case on the basis of the original issues. In the first appeal, the specific plea was taken that the trial court had given no finding on the additional issues. That was also not adverted to in the judgment of the lower appellate court. In this context, this Court had

remanded the case back to the trial court to take a decision afresh after

appreciating the evidence already on record while deciding issues No.5A and 5B.

Counsel for the appellant has argued that the here the situation is identical. In the present case, it would be productive to reproduce the original issues:-

- “1. Whether Deva Singh executed a valid Will dated 13.05.1996 in favour of the defendant no.3/counter claimant?OPD.*
- 2. Whether the plaintiff is in possession of suit property as a licensee, as alleged?OPD.*
- 3. Whether the plaintiff is in possession of suit property as a right, as alleged?OPP.*
- 4. Whether the defendant no.3 is estopped by his act and conduct from filing the present counter claim as alleged?OPP.*
- 5. Whether the defendant No.3 has no locus standi to file the counter claim?OPP.*
- 6. Whether the counter claim is not maintainable in the present form?OPP.*
- 7. Whether the defendant no.3 is entitled to decree for possession by way of counter claim? OPD.*
- 7-A. Whether the defendant is the owner of the shop in dispute?OPD.*
- 8. Relief.”*

It would be seen that issue No.7 and the additional issue No.7-A are by and large identical. Consequently, it has to be held that issue No.7-A was decided. In the cited case, the additional issues were totally different from the original issues. In the circumstances, I find no fault with the findings of the courts below.

Appeal is dismissed. No costs.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 07, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No