

240

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.5124 of 2014 (O&M)

Date of Decision: 22.11.2018

Raghbir Singh

..... Appellant

Versus

Amandeep Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. H.K. Brinda, Advocate,
for the appellant.

Mr. H.P.S. Ishar, Advocate,
for the respondent.

SUDIP AHLUWALIA, J. (ORAL)

The contesting parties in the present appeal are closely related.

The appellant happens to be the Paternal Uncle (younger brother of father of the respondent) of the respondent, who had originally filed the Civil Suit against him for declaration and mandatory injunction.

2. The respondent had claimed his right on the basis of an admitted Will executed by the appellant's father, wherein he had mentioned about the existence of three shops belonging to him and allowed half share of the same, i.e. amounting to one and a half shop, in favour of each of the contesting parties to devolve after his demise. The respondent in his suit contended that the appellant/defendant was actually in possession of two out

3. The Ld. Trial Court decreed not only the suit of the respondent/plaintiff, but also the Counter-Claim preferred by the appellant/defendant. The decree passed in favour of the respondent/plaintiff was not challenged. He, however, challenged the decree passed against him in the Counter-Claim raised against him on behalf of the defendant/appellant, and the appeal was allowed by the Ld. Additional District Judge, S.A.S. Nagar, Mohali, with the following observations:

23. The site plan “Mark-C” which is relied upon by the respondent has not been duly proved by him. No evidence has been adduced by the respondent to prove that the property, as asserted by him in site plan, belonged to Jagat Singh. It is established legal proposition that mere assertions and unproved documents can not form the foundation of the findings of a court.

24. In the instant case the will ExPW2/B specified only three shops as were averred by the appellant. There is no clause in the will which categorically makes a mention regarding 12 shops

shown in site plan and claimed by the respondent.

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26. *It is an established legal proposition that unless title of a person is proved qua a specific property, no transfer said to be made by him can be considered as valid and such transfer if made, cannot convey rights to the transferee. The respondent filed Counter-Claim for six shops which he asserts to be Jagat Singh's property and claims their possession on the basis of the will but to be entitled to Counter-Claim he had to prove that these shops were owned by Jagat Singh. The burden of proof to prove ownership qua these six shops was on the respondent and he has failed miserably to prove the same.*

27. *In the arena of evidence and consideration of the contentions raised by the counsels, this court holds that judgment and decree of learned trial court vide which Counter-Claim of respondent/defendant No.1 was decreed cannot be considered to have been based on sound legal principles. Thus, the instant appeal preferred by Amandeep Singh is hereby allowed and the impugned order dated 16.5.2013 pertaining to Counter-Claim is set aside. Decree sheet be prepared. Copy of this order be attached with the lower court record and sent back forthwith. Appeal file be consigned to the record room."*

4. It is thus seen that the Ld. Lower Appellate Court was of the view that the Counter-Claim of the appellant/original defendant was itself not entertainable, since he had failed to prove the title/ownership of his predecessor/father to the disputed properties/shops, and that as the Site Plan "Marked-C" filed along with the Counter-Claim was not regularly led into evidence nor exhibited in accordance with law, the same could not have

been made “the foundation” of any judicial findings.

5. This Court has gone through the LCR containing relevant pleadings of the contesting sides before the Ld. Trial Court. It is seen that in the Counter-Claim, there is no mention whatsoever of the description of the disputed properties/shops in the written averments, which might be treated as satisfactory in terms of the requirements of Order VII Rule 3 of the Code of Civil Procedure. The Site Map alone was relied upon by the appellant/Counter-Claimant, which was only marked “C” by the Ld. Trial Court and rightly not admitted into evidence, since no one was apparently examined to prove who, and in what circumstances had drawn up the same. So much so, even the name of the Municipality/Town in which the disputed shops are depicted as existing has not been shown anywhere in the Site Plan. This apart, even the pleadings raised on behalf of the appellant in his Counter-Claim are visibly insufficient inasmuch as they do not indicate as to when and how the appellant's father-Jagat Singh came to own or occupy the disputed shops. The written statement to such Counter-Claim as also the replication filed by the respondent/plaintiff before the Ld. Trial Court, if anything, are even more evasive and incomplete. In fine, it would appear that both the contesting sides have suffered on account of callous and careless professional work in the matter of preparation of their pleadings by their respective Counsel at the trial stage. Even if the present appeal was to be dismissed, that would not itself have the effect of permanently settling the disputes between the parties, since satisfactory existence of the disputed shops was not established on behalf of the appellant in his Counter-Claim, but rebuttal of his allegations by the respondent in his written statement was

even more evasive and pathetic.

6. For the above reasons, this is one of the fit and rare cases of its own kind in which the matter needs to be remanded back to the Ld. Trial Court, so as to enable the parties to amend their pleadings qua the Counter-Claim of the appellant and thereafter, get the disputes between them to be adjudicated in accordance with law.

7. With the above observations, the present appeal is allowed after setting aside the impugned judgments of both the Ld. Courts below qua the proceedings raising out of the appellant's Counter-Claim in the original title suit.

8. The appellant would be required to file his properly amended and complete pleadings of his Counter-Claim with appropriately sufficient description of the disputed properties before the Ld. Trial Court within a day to be fixed by the said Court, which shall not be later than one month from the date of original appearance, after which the respondent shall file his amended written statement against such amended Counter-Claim within the time to be fixed by the Ld. Trial Court, which shall thereafter make an endeavour to dispose of the matter as expeditiously as possible, and preferably, before expiry of the Calendar Year 2019.

9. Both the parties are directed to appear before the Ld. Trial Court on 16.12.2018.

10. Disposed off.

22.11.2018

Apurva

**(SUDIP AHLUWALIA)
JUDGE**

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| 1. Whether speaking/ reasoned : | Yes/ No |
| 2. Whether reportable : | Yes/ No |