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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RA-RS-72-C-2016 IN
RSA-3418-2010
Date of decision : 05.02.2018

Subhash Chander Bhandari and others

... Appellant(s)

Versus

Prem Kumar

... Review applicant/respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jatinder Singla, Advocate
for the review applicant/respondent.

Mr. Vikas Singh, Advocate
for the non-applicant/appellants.

AMIT RAWAL, J. (ORAL)

This Court vide order dated 05.05.2016 had disposed of the appeal bearing RSA No.3418 of 2010 in view of the statement made by Mr. Jatinder Singla, Advocate, representing the review-applicant/respondent-plaintiff.

Mr. Jatinder Singla, learned counsel appearing on behalf of review applicant/respondent-plaintiff submits that in fact the counterclaim was also submitted by Mr. Subhash Chander Bhandari, seeking following relief:-

“Suit for permanent injunction restraining the plaintiff Prem Kumar, his friends, attorney relatives, agents, servants from interfering or causing to interfere in any manner whatsoever or through demarcation from revenue agency or with the help of the false entries in the revenue records over the land measuring 7 bighas i.e. Kharsa No.610 (5-17) and khasra No.611 (1-3), bound as :-

*East: Road 46 karams West:32 Karams along with
Ayurvedic college North : 81.5 karams
South: 66 karams in the revenue estate of Patiala on Mohindra
college Road, Patiala as per jamabadni for the year 1991-92.”*

In fact the description of the property has incorrectly been mentioned, whereas, it was required to be mentioned as per compromise (Annexure A-1). Dehors of the fact that the suit of the plaintiff has also been decreed in view of the aforesaid compromise (Annexure A-1).

Mr. Vikas Singh, learned counsel appearing on behalf of the non-applicant/appellant(s)-defendant(s) submits that once, in a suit filed by the review-applicant/respondent-plaintiff, his interest is protected and there cannot be an error apparent on record, thus, urges this Court for dismissal of the review application.

I have heard the learned counsel for the parties and appraised the paper book. The compromise is not in dispute. The description of the property given in the counterclaim is not tandem with the description of the property indicated in para 3(i) of the Compromise (Annexure A-1), wherein consensus was arrived at as indicated in para 3(ii) to 3(v). Resultantly, the order dated 05.05.2016 of mine suffers from error apparent on record, I am of the view that the same is required to be corrected/modified. The order dated 05.05.2016 reads as under:-

"The appellants-defendants are aggrieved of the judgment and decree rendered by both the Courts below, particularly of the Additional District Judge, Patiala, wherein the judgment and decree of the trial Court decreeing the suit of the respondent-plaintiff and declining the counter-claim has been affirmed.

Mr. Vikas Singh, learned counsel appearing on behalf of the appellants-defendants submits that the Appellate Court had acted as if there was no counter-claim and decided the appeal by treating the appellant as defendant not as plaintiff in his counter-claim, thus, urges this Court to formulate the following substantial questions of law:-

- 1. Whether once, the respondent-plaintiff submitted before the Courts below that they did not have any concern with regard to the counter-claim set up as per the Ex.D-1, the counter claim ought to have been decreed or not?.*
- 2. Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity, much less, abdicated in not discussing with the counter-claim?*

Mr. Jatinder Singla, learned counsel appearing on behalf of the respondent-plaintiff submits that in case, the appellants-defendants are not aggrieved of the decreetal of the suit of the respondent-plaintiff, they have no objection, in case, counter-claim of the appellant-defendant be decreed. He further submits that the counter-claim as set up before the trial Court is not as per Ex.D-1 which pertains to khasra number 610 (5-17) and khasra No.611 (1-3).

In view of the aforesaid facts and circumstances of the case, I am of the view that the following counterclaim of the respondent-plaintiff is decreed:-

3 i). That the defendant No.1 hereby relinquish the right, title and interest in 7 Bighas of land comprising in Khasra No.610 as per the dimensions given in the map annexed herewith duly signed by the parties to the compromise as detailed below:

East: Mohindra College Road 46 karams, which will start immediately after the 30 Karams of Khasra No.610 along with the road towards Khasra No.611.

West: 32 karams, along with Ayurvedic College Hostel.

North: 81½ Karams (from the main road towards Ayurvedic College Hostel) along with remaining area of Khasra No.610.

South: 66 Karams, from main road towards Ayurvedic College Hostel along with Khasra No.611

ii) However, if on actual demarcation by the revenue officials, the actual area of Khasra No.610 with the defendant No.1, after deducting the area already sold by him, comes to be less than 7 Bighas, then the deficient area shall be made up by including that much area from Khasra No.611 parallel to Khasra No.610. It is also clarified that dimension of the boundary on the east (Mahindra College Road) of the relinquished area shall start from the point, the already sold area ends.

iii) That the vacant possession of the said land shall be that of the owner from the day of the acceptance of this compromise by the Court. However, in case the defendant fails to deliver the vacant possession, the appellant shall be entitled to the

possession of the whole land measuring 7 Bighas by executing the compromise apart from the fact that the defendant No.1 shall be liable to be prosecuted under the provisions of contempt of Courts Act.

iv) That RSA No.286/90 and RSA No.658 of 1990 shall stand dismissed as withdrawn.

v) That the defendant No.1 had relinquished the rights in respect of 7 Bighas of land only as a gesture of good-will to put an end to the litigation. The plaintiffs admits that the gift of land by Sh. Jeewan Lal in favour of Sh. Raghunandan Lal Bhandari is legal and confers valid title and the subsequent decree dated 02.05.1966 was rightly suffered by Sh. Jeewan Lal in favour of Sh. Raghunandan Lal Bhandari. The subsequent sale on 22.1.1975 by Sh. Raghunandan Lal Bhandari through his General Attorney Sh. Laxminarain in favour of defendant No.1 is legal and valid.

vi) That if any legal heir/representative/successor-in-interest revive/raise/succeeds in establishing their rights regarding the suit land against the defendant No.1 in any proceeding then Sh. Rameshwar Dass Bhandari and Sh. Subhash Chander shall satisfy their claim. However, their failure to satisfy the said claim of Legal Representative/heir/successor in interest of Sh. Raghunandan Lal Bhandari, the said compromise is to be treated as nonest, ineffective as if the parties have never compromised. The parties in that case shall restore the status

as it exits prior to compromise regarding the entire suit land at their own cost and expenses.”

However, the judgment and decree of the trial Court rendered in Civil Suit bearing No.28-T of 15.12.1997 titled as 'Prem Kumar V/s Rameshwar Dass Bhandari and others” with regard to following finding is hereby upheld.

“Amended suit for permanent injunction restraining the defendants from interfering or cause to interfere in any manner whatsoever, in the peaceful possession of the plaintiff over the land bearing khasra No.3208/610/1(0-6) biswas comprised of Khewat/Khata No.3467/5275 situated at Patiala according to the jamabandi for the year 1991-92 or from transferring the suit land or alienating in any manner to any body illegally and forcibly.”

Accordingly, the appeal as per statement of respondent's counsel stands disposed of.

Resultantly, the present review application stands allowed, in essence, the counter-claim is decided in terms of the compromise (Annexure A-1), which is made part of the order.

05.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No