

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3654 of 2017

Date of Decision: 08.04.2019

Sukhwinder Singh and others

.....Petitioners

Vs.

Ajaib Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Vivek Gupta, Advocate, for the petitioners.

Mr. M.L. Saggar, Senior Advocate, with
Mr. Rohit Joshi, Advocate, for respondents no. 2 and 3.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioners challenge the order passed by the learned appellate Court, i.e. the Additional District Judge, Sangrur, on 03.04.2017, dismissing the application filed by them (appellants before that Court) under Order 41 Rule 25 CPC, they having sought the framing of an additional issue in the suit filed by them (which had been dismissed by the trial Court).

A perusal of the impugned order shows that it has been held therein that the relief sought by the present petitioners (plaintiffs) pertained to a house which they claim title to on the basis of a registered sale deed dated 14.10.2004 (referred to in the impugned order as an “alleged registered sale deed”), as also on an “alleged agreement dated 14.10.2004” which, as per the petitioners, were documents executed by the Ist respondent herein (defendant no. 1 in the suit) in their favour.

The issue that was sought to be framed was one pertaining to whether a decree dated 24.08.1991 (contended by the petitioners herein to be a collusive

one between respondent no. 1 on one side, and respondents no. 2 and 3 on the other), could be held to be a decree on the strength of which respondents no. 2 and 3 herein became entitled to the suit property.

The impugned order further goes on to state that the claim of the petitioners-plaintiffs being based on two documents relied upon by them, any weakness in the case of the defendants (respondents herein) could not be relied upon by the petitioners, with them having actually to prove the documents that they relied upon to claim title to the suit property.

Learned counsel for the petitioners has submitted that as a matter of fact the aforesaid decree dated 24.08.1991 was already subject matter of a civil suit filed by respondents no. 2 and 3, by which they sought to be declared as owners of the suit property, with that suit having been dismissed vide a judgment and decree issued on 22.02.2011, as is stated to have been duly exhibited by the petitioners as Ex. P-12 before the trial Court in the current *lis*, (a copy thereof stated to be Annexure P-5 with the present petition).

Learned Senior Counsel appearing for respondents no. 2 and 3 on the other hand submits that the impugned order does not require to be interfered with, for the reasons very well given therein, to the effect that no issue needs to be framed on the basis of a document already relied upon by the petitioners-plaintiffs to prove the first issue as had been framed by the trial Court (on their entitlement to the suit property).

Having considered the matter, I agree with Mr. Saggar, learned Senior Counsel, inasmuch as, the relevant issues framed by the trial Court with regard to the relief claimed by the plaintiffs in the current *lis*, i.e. in the suit filed by the petitioners herein, are as follows:-

“1. Whether the plaintiffs are entitled to

mandatory injunction directing the defendants to deliver the vacant possession to the plaintiffs, or the house, constructed in 'Khata' no. 105/176 situated at village Cheema? OPP

2. *Whether the plaintiffs are entitled to permanent injunction, as prayed for? OPP*

3. *Whether the suit of the plaintiffs is not maintainable in the present form? OPD*

xxx

xxx

xxx

xxx

5. *Whether the alleged sale deed dated 14.10.2004 relied on by the plaintiffs is the result of fraud and misrepresentation and the same is without any consideration? OPD”*

Obviously, if to seek the relief pertaining to issue no. 1, the petitioners-plaintiffs had already led by way of evidence judgments and decrees passed against the respondents (as contended before this Court), the appellate Court would be bound to consider that evidence and then adjudicate as to whether the trial Court erred in interpreting the said evidence or not.

Consequently, I find no ground to interfere with the impugned order, with this petition therefore dismissed, but with a direction given to the appellate Court to ensure that while adjudicating upon the matter, it duly takes into consideration the entire evidence led by the plaintiffs-petitioners, including Exs. P-10 and P-12 as have been referred to by learned counsel for the petitioners before this Court.

April 08, 2019
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes