

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 9 of 2019 (O&M)
Date of Decision: 29.04.2019

Laxmi Narain and others

...Appellants

VERSUS

Virender Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ram Darshan Yadav, Advocate
for the appellants.

Ms. Sandeep Kumar Sharma, Advocate
for the respondents.

SURINDER GUPTA, J. (Oral)

Heard.

Suit filed by plaintiffs, Laxmi Narain, Sat Narain and Shiv Narain, for declaration and consequential relief of permanent injunction with regard to ½ share of suit property, as fully described in headnote of the plaint, was decreed by learned trial Court.

Against that judgment and decree, respondent no. 1-Virender Singh (defendant no. 2) filed appeal. During pendency of appeal, he moved application under Order XLI Rule 23 and 23-A CPC for remanding the case and granting opportunity to defendant no. 2 to file fresh written statement to last amended plaint. Ist Appellate Court while deciding application observed that status of written statement dated 29.11.2014 alleged to have been filed by defendant no. 2-Virender Singh to the amended written statement, has not been clarified and on this ground set aside the judgment and decree of trial Court and remanded the case with direction to learned trial Court to decide as to whether written statement dated 29.11.2014 was filed by defendant no. 2-

Virender Singh, if so, whether issues were required to be framed and then to decide the case afresh.

Judgment of learned trial Court shows that suit of plaintiff was contested by defendant no. 1 on merit. Though, on behalf of defendant no. 2-Virender Singh, written statement dated 29.11.2014 is stated to have been filed, still learned trial Court has not relied upon alleged admission of defendant no. 2-Virender Singh in that written statement while deciding the suit, which was decided on merit.

I have also gone through the grounds of appeal filed by defendant no. 2-Virender Singh with assistance of learned counsel for respondents, wherein learned counsel for respondents could not point out any plea taken by defendant no. 2 that he had not filed written statement dated 29.11.2014.

Now the question, which arises for consideration, is as to whether on the mere submission of defendant no. 2-Virender Singh that he had not filed written statement dated 29.11.2014, judgment of trial Court could be set aside to remand the case?

Firstly, in the absence of any such plea in the grounds of appeal, Ist Appellate Court could not accept the plea of appellant before it (defendant no. 2), raised in the application under Order XLI Rule 23 and 23A CPC that he had not filed written statement dated 29.11.2014. Even if Ist Appellate Court has to examine this aspect, it was all competent to call for the record of learned trial Court, examine this plea of defendant no. 2, record finding and then proceed further in accordance with law. It is apparent that Ist Appellate Court fell in grave error while remanding the case merely on the application of defendant no. 2 that he had not filed written statement dated 29.11.2014,

particularly when such plea was never raised before learned trial Court or

even in grounds of appeal.

In view of above facts and circumstances, this appeal has merit and the same is accepted. Order passed by Additional District Judge, Jhajjar dated 11.12.2018 is set aside. Parties are directed to appear before Ist Appellate Court/successor Court on 30.05.2019, on which date Ist Appellate Court/successor Court will take the file of Civil Appeal no. 53 of 2015/2016 on board and proceed further to decide the same on merit. It is, however, made clear that nothing observed in this order shall be taken as expression of opinion on merit of the case. If Ist Appellate Court on examination of trial Court record forms an opinion that written statement dated 29.11.2014 was not filed by defendant no. 2-Virender Singh, it can pass an appropriate order and proceed further in accordance with law.

April 29, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No