

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.3806 of 2019

Date of Decision.31.05.2019

Khushal Singh

...Petitioner

Vs

Bhagat Singh and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rohit Ahuja, Advocate
for the petitioner.

-:-

AMIT RAWAL J. (ORAL)

The grievance of the petitioner is that this Court vide order dated 17.01.2019 passed in SAO No.6 of 2016 remitted the matter to the lower Appellate Court to decide the controversy afresh and frame the additional issue, if required. The operative part of the same reads as under:-

“Keeping in view the above facts, this appeal has merits and the same is accepted. Impugned judgment dated 3.11.2015 is set aside. Parties are directed to appear before the first Appellate Court on 4.2.2019. First Appellate Court/Successor Court will take the appeal (Civil Appeal No.164 of 01.10.2013 CIS No.CA0000688/2013) on board, take the amended pleadings, frame additional issues if required and then proceed to decide the appeal as per observations above.”

The lower Appellate Court on the basis of amended pleadings, framed following additional issues:-

“1-A. Whether the plaintiff is entitled for decree of permanent injunction restraining the defendant from dispossessing the plaintiff from the shop in dispute marked as CEFG in the site plan? OPP

1-B. Whether plaintiff is entitled for restraining the defendant from taking over the exclusive possession and other heirs from the joint user and enjoyment and possession over the portion of deceased Jawahar Singh as shown in letters marked as GHI and LMJK and NOSRT as shown in site plan in yellow colour? OPP

1-C. If the plaintiff is not entitled for the relief of injunction pertaining to the portions GHI and LMJK and NOSRT of deceased Jawahar Singh, whether plaintiff can be granted a decree of possession by partition by metes and bounds? OPP

1-D Whether the plaintiff is entitled for a decree of possession of shop in dispute, as shown in letters marked with CEFG, if the defendant succeeds in dispossessing the plaintiff and other co-sharers from the said property forcibly and illegally during the pendency of the suit or if the plaintiff is found out of the possession of the said portion or it is found in possession of defendant? OPP

1-E. Whether the suit of the plaintiff is bed for want of proper court fee as plaintiff is duty bound to pay the ad valorem court fee on the market value of the suit

properties? OPD.”

Learned counsel for the petitioner submitted that the lower Appellate Court after framing the additional issue sought report from the trial Court, which is illegal as it could have taken the additional evidence.

I am afraid aforementioned argument would not be sustainable, for the simple reason that the additional issues have been framed for the first time and evidence cannot be led by way of additional evidence, as one of the parties may be affected and statutory right of appeal/revision of such party cannot be taken away.

In view of aforementioned fact, I do not find any illegality and infirmity in the order under challenge. No ground for interference is made out. Resultantly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

May 31, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No