

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

105

Date of decision: 31.10.2019

RSA No.4108 of 2005 (O&M)

Kamrudin and ors.

... Appellants

Versus

Rafikan @ Fikko and ors.

... Respondents

RSA No.4134 of 2005 (O&M)

Sakrudin @ Sakur Ali and ors.

... Appellants

Versus

Mansaf Ali and ors.

... Respondents

COCP No.1673 of 2007 (O&M)

Sakrudin and ors.

... Petitioners

Versus

Mansaf Ali and ors.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. CB Goel, Advocate for the appellants/petitioners.
Mr. Avnish Mittal, Advocate for respondents No.1 to 3.
Mr. OP Goyal, Sr. Advocate with
Mr. Sanjeev K. Sharma, Advocate for respondent No.4.

REKHA MITTAL, J. (Oral)

This order will dispose of RSA Nos.4108, 4134 of 2005 and COCP No.1673 of 2007. For facility of reference, facts are taken from RSA No.4108 of 2005.

CM No.7830-C of 2018 in RSA No.4108 of 2005

CM No.11631-C of 2017 in RSA No.4134 of 2005

Prayer in these applications is for impleading legal representative(s) (in short "LRs") of Din Mohamed-respondent No.4.

In view of averments made in the application supported by an affidavit of Galib Hassan and arguments advanced, applications are allowed and persons mentioned in para 2 of the applications are allowed to be brought on record as LRs of Din Mohamed-respondent No.4 (since deceased), subject to just exceptions, for the purpose of present lis only.

Amended memo of parties is taken on record.

Disposed of accordingly.

Main Case

Kamrudin and others filed Civil Suit No.258 of 1992 seeking declaration that they are owners in possession in equal shares of land measuring 39 kanal 13 marlas, detailed in para 4 of the judgment of trial Court on the basis of oral exchange effected between the parties to the suit in October, 1987. It is pleaded that plaintiffs gave land measuring 20 kanal bearing khasra Nos.22/1, 10/1, 23/5, 6 to the defendants in lieu of land measuring 39 kanal 13 marlas by way of oral exchange followed by delivery of possession of exchanged land.

Rasid and another Vs. Shakurdin and others filed Civil Suit No.259 of 1992 claiming ownership of 20 kanals of land on the basis of oral exchange and also raised averments that in lieu of 20 kanals of land given to them, only 28 kanals of land was given to Kamrudin and others.

Both the suits were decided vide common judgment dated 24.04.2003 whereby both the suits were decreed by the trial Court by accepting the oral exchange propounded by Kamrudin and others in Civil Suit No.258 of 1992 and Rasid and another in Civil Suit No.259 of 1992.

Two appeals were filed namely Civil Appeal No.130/CA/2003 titled 'Rasid and another Vs. Shakurdin and others' and No.131/CA/2003 captioned 'Deen Mohammad Vs. Kamru Deen and others' that emerged out of decision in Civil Suit No.258 of 1992. Both the appeals were decided vide common judgment dated 06.09.2005 by the Additional District Judge, Jagadhri whereby the Court recorded its conclusion to the following effect:-

xx learned lower Court was not justified to declare the plaintiffs as owners in possession of the suit land measuring 39 kanal 13 marlas and 20 kanal 0 marla on the basis of alleged oral exchange of October, 1987 and thus, they are also not entitled to any injunction on the basis of said oral exchange, which is neither legal nor valid. Hence, the findings of the learned lower Court on issues No.1 to 3 and 7 are hereby reversed whereas findings of the learned lower Court on the remaining issues are hereby affirmed as such. Consequently, both the appeals are accepted and allowed with costs. The impugned judgment and decree dated 24.04.2003 passed by learned lower Court are hereby set aside. Resultantly, the suits filed by plaintiffs stand dismissed with costs. xx

Counsel for the parties are *ad idem* that appeals may be

disposed of, impugned judgment and decree dated 06.09.2005 passed by the appellate Court may be set aside and the matter be remitted to the appellate Court for decision of the appeals afresh, in accordance with law.

Sh. OP Goyal, Senior Advocate representing Deen Mohd. (since deceased) through LR's would pray that the parties may be permitted to adduce additional evidence in support of their respective claims.

In view of the above, the appeals stand disposed of. Impugned judgment and decree(s) passed by the appellate Court is set aside. The matter is remitted to the appellate Court for decision of the appeals afresh, in accordance with law. The parties would be at liberty to file application for additional evidence. If any such application is filed by either of the parties, the same would be decided by the first appellate Court, in accordance with law. Parties through their counsel are directed to appear before the first appellate Court on 27.11.2019. The appellate Court is directed to dispose of the appeals within a period of six months of parties putting in appearance.

Counsel for the parties would state that in view of disposal of appeals, COCP No.1673 of 2007 is rendered infructuous and disposed of accordingly.

31.10.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No