

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

(1) SAO No. 74 of 2011 (O&M)
Date of Decision: May 23, 2019

Ajaib Singh Rahal and others

.....APPELLANTS

VERSUS

Jal Kaur (since deceased) through her LR

.....RESPONDENT

(2) SAO No. 75 of 2011 (O&M)

Ajaib Singh Rahal and others

.....APPELLANTS

VERSUS

Jal Kaur (since deceased) through her LR

.....RESPONDENT

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S.Sodhi, Advocate
 for the appellants.

Mr. Balram Prashar, Advocate for
Mr. Jagmohan Ghumman, Advocate
for the respondent.

SURINDER GUPTA, J.(Oral)

Heard.

Vide judgment dated 01.12.2008 passed in Civil Suit No. 86 of 04.05.2000, learned Additional Civil Judge (Sr. Divn.), Jagraon appears to have decided two civil suits. However, while going through the judgments, it is apparent that neither the facts of the second suit filed by Ajaib Singh and others, the plea of defendants in that suit, written statement were discussed nor findings on issues framed in second suit were recorded.

Learned trial Court in the head note only mentioned about the suit filed by Jal Kaur. However, in one para it was mentioned that defendants have also filed a suit for declaration claiming themselves to be the owners in possession of the suit property on the basis of Will, as such, both the suits were consolidated.

In appeal, filed by Jal Kaur, learned Ist Appellate Court took note of this fact in para no. 18 and 19 as follows:

18. When the judgment under appeal is perused by considering the above said aspects as defined under Order 20 Rule 4, 5 and 6 C.P.C., the judgment and decree under appeal have not met the requisite requirements of law. The judgment under appeal does not contain suit number, name of parties, claim in suit and the concise statement of Civil Suit No. 1007 of 05.12.2000. In the entire judgment under appeal, the civil suit no. 1007 dated 05.12.2000 has not been mentioned. In the judgment under appeal, issues framed on 18.5.2001 in civil suit no. 1007 of 05.12.2000 have also not been written anywhere. There is only passing reference on page no. 5 of the judgment under appeal that defendants have also filed a suit for declaration and in the relief clause it is written that suit filed by Jal Kaur is dismissed and the suit filed by Ajaib Singh is decreed. The names and description of the parties, their registered address, particulars of the claim and relief granted in suit No. 1007 dated 05.12.2000 has not been mentioned in the decree sheet which has been attached with civil suit no. 1007 dated 05.12.2000. It is mandatory as per provisions of Order 20 Rule 6 CPC that the decree shall contain the number of the suit, name and description of the parties, their registered addresses and particulars of the claim and shall satisfy clearly the relief granted or other determination on the suit. But in the decree, all the above said ingredients are missing. Only the attested copy of the judgment and decree sheet in civil suit No.

86 dated 04.05.2000 has been attached, which has not fulfilled the requirement of the law.

19. The specific five issues have been framed on 18.05.2001 in civil suit No. 1007 of 05.12.2000, but in the judgment under appeal, the court has not recorded its findings or decision upon issues no. 1 to 5 which were framed on 18.05.2001. Non recording of findings on issue in civil suit No. 1007 dated 05.12.2000 is grave illegality, irregularity and again the spirit of legislation. As such, the judgment and decree under appeal are set aside. Both the appeals are allowed with costs. The civil suit no. 86 of 04.05.2000 titled as Jal Kaur Vs. Ajaib Singh and others And civil suit no. 1007 of 05.12.2000 titled as Ajaib Singh and others Vs. Jal Kaur are ordered to be remanded to the trial Court for disposal in accordance with the provisions of law.

In the Civil Suit No. 1007 of 05.12.2000 filed by Ajaib Singh and others versus Jal Kaur following issues were framed by the trial Court:

- 1. Whether the plaintiffs are entitled for declaration as prayed for? OPP.*
- 2. Whether the plaintiffs are entitled for injunction as prayed for? OPP.*
- 3. Whether the suit is liable to be stayed under Section 10 CPC? OPD.*
- 4. Whether the plaintiffs are not in possession of the suit property? OPD.*
- 5. Relief.*

Learned trial Court neither discussed nor recorded any findings on these issues but on the basis of the findings recorded in Civil suit filed by Jal Kaur (Civil Suit No. 86 of 04.05.2000), the suit filed by Ajaib Singh and others was decreed. Learned Ist Appellate Court has rightly taken note of lapses in the judgment of lower Court while remanding the case. It is

apparent that the issues raised by Ajaib Singh and others were not decided on merits. Even it was not stated in the judgment of the lower Court that findings on the issues framed in the suit filed by Ajaib Singh are covered by the findings on the issues framed in the suit filed by Jal Kaur. The Ist Appellate Court has committed no error while directing the trial Court to take note of the facts of the suit filed by Ajaib Singh and records its findings on the issues framed in that suit while disposing of two consolidated cases by a common judgment.

On perusal of order under appeal, I find no legal or factual infirmity therein calling for any interference. These appeals have no merits.

Dismissed.

Parties are directed to appear before the trial Court which will proceed to decide both the civil suits expeditiously as the parties have already concluded their evidence.

May 23, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No