

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115

RSA No.1573 of 2016 (O&M)

Date of decision: 29.01.2019

Satpal Singh and another

..... Appellants

Versus

Gurmej Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. L.S. Mann, Advocate, for
Mr. J.S. Verka, Advocate
for the appellants.

Mr. Vipin Mahajan, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the regular second appeal against the judgment passed by the First Appellate Court reversing the judgment of the trial Court resulting in dismissal of the suit.

In the considered view of this Court, the following substantial question of law requires determination:-

“Whether a judgment passed by the First Appellate Court is suffering from patent error particularly when the Court overlooks the prayer made in the suit i.e. consequential relief of possession and hence, finds that the suit filed by the plaintiffs without seeking consequential relief of possession was not maintainable?”

Plaintiffs filed a suit for declaration to the effect that the plaintiffs are owner in possession of 4 kanal land out of 8 kanal 4 marlas in a specific khasra number with a consequential relief of possession of the

land.

The defendants contested the suit claiming that the property has already been partitioned.

Learned trial Court after finding that the mutation of partition of the land does not record the name of the plaintiffs returns a finding that the parties are co-sharer and therefore, they were declared to be joint owners subject to partition. However, learned First Appellate Court reversed the judgment only on the ground that the plaintiffs have not sought possession and therefore, the suit is barred as per Proviso to Section 34 of the Specific Relief Act. The finding arrived at by the First Appellate Court is against the record. The headnote of the plaint is extracted as under:-

“Suit for declaration to the effect that the plaintiffs are the owners in possession of land measuring 4 kanals out of the land measuring 8 kanals 4 marlas bearing khasra numbers 29R/3/1/1/2, 8/3/1 Khewat No.49 khatuni No.175 as mentioned in the copy of Jamabandi for the year 1998-99 and as situated at village Kohali, HB No.163 Tehsil Batala with consequential relief of possession of the suit land.”

It is apparent that the relief of possession has been sought. In any case, once the parties are held to be co-owners, the suit for possession was not maintainable because such possession can be taken only after partition of the land.

Learned First Appellate Court has not found that the findings of the trial Court declaring the plaintiffs to be co-owner/co-sharer in the land to be erroneous. In such circumstances, the orders passed by the learned First Appellate Court is clearly suffers from material irregularity. As per section 34 of the Specific Relief Act, the suit for declaration can be dismissed only if the plaintiffs are entitled to further relief which has not

been prayed for. Once the plaintiffs were not entitled to any further relief, the Proviso to Section 34 of the Specific Relief Act would have no application.

Hence, the question framed earlier, is answered in favour of the plaintiffs-appellants.

In view thereof, the judgment passed by the First Appellate Court is set aside and that of the trial Court is restored.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Regular Second Appeal is allowed.

Let a copy of the order be sent to the concerned Additional District Judge.

29.01.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No