

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

-.-

RSA 2477 of 2016 (O&M)

Date of decision: 27.08.2019

Sucha Singh

.....Appellant

Versus

Nachhattar Singh and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Surjit Singh Swaich, Advocate
for the appellant

Mr. Jaideep Verma, Advocate
for respondent No.1

-.-

Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against the judgments and decrees passed by the Courts whereby suit for permanent injunction restraining defendant No. 1 from interfering in peaceful possession and dispossessing the respondent/plaintiff from the suit property i.e. 299 square yards (10 M) shown in blue colour and encroaching upon raasta/passage 10' shown red in site plan was decreed by the trial Court vide judgment and decree dated 01.07.2014 and appeal preferred by the appellant did not find favour with the Additional District Judge, Ludhiana.

Counsel for the appellant would argue that the appellant assailed the judgment and decree passed by the trial Court by raising various issues detailed in the grounds of appeal. The first appellate Court noticed contention of counsel for the appellant in para 12 of the judgment but disposed of the appeal by reproducing almost verbatim observations of the

trial Court made in paras 12 and 13 of its judgment while deciding issue No.

1. It is vehemently argued that the judgment and decree passed by first appellate Court cannot be allowed to sustain when examined in the light of requirements of Rule 31 Order XLI of the Code of Civil Procedure that deals with "Contents, date and signature of Judgment". It is vehemently argued that as the Court in appeal is the final court to decide factual controversy, a valuable right of the appellant has been prejudiced as the appellate Court has disposed of the appeal by merely reproducing the observations of the trial Court without adverting to the submissions made by counsel for the appellant therein.

Counsel representing the respondent/plaintiff, on the contrary, has supported the impugned judgments and decrees with the submission that the same are based upon correct appreciation of materials on record and do not call for intervention in the second appeal. It is further argued that since the Court in appeal has concurred with findings recorded by the trial Court, there was no reason for the first appellate Court to record any separate findings.

I have heard counsel for the parties and perused the impugned judgments.

Be that as it may, it is undisputed position of the case that paras 14-15 of the judgment of the appellate Court are just reproduction of observations made by the trial Court in paras 12-13 of its judgment while dealing with issue No. 1. The Court in appeal has not even addressed arguments raised by counsel for the appellant as noticed in para 12 of the judgment. The appellate Court disposed of the appeal without application

first appellate Court is the final court for deciding factual controversy. In view of the above, I find merit in contention of the appellant that decree and judgment passed by the first appellate Court is liable to be set aside. The matter needs remittance to the first appellate Court for deciding the appeal afresh, in accordance with law.

In view of what has been discussed herein before, the appeal is allowed, judgment and decree passed by the first appellate Court is set aside. The appeal is restored on the Board of successor Court of Shri Daljit Singh Ralhan, the then Additional District Judge, Ludhiana for disposal in accordance with law. Parties through their counsel are directed to appear before the first appellate Court on 16.09.2019. The appellate Court shall dispose of the appeal within a period of three months of the parties putting in appearance.

Before parting with this judgment, it is pertinent to note that the appellant filed an application seeking permission to adduce additional evidence. Counsel for the appellant would state that application may be dismissed as withdrawn but without prejudice to right of appellant to file an application for additional evidence before the first appellate Court. Accordingly, application for additional evidence (CM 10830 CII of 2019) is dismissed as withdrawn.

(Rekha Mittal)
Judge

27.08.2019
Mohan Bimbora

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No