

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

**RSA No.2995 of 2016 (O&M)
Date of Decision.10.05.2019**

Raj Singh and another ...Appellants

Vs

Ashok Kumar and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.S. Sidhu, Senior Advocate with
Mr. Dushyat Sarvesh, Advocate
for the appellants.

Mr. Sushil Jain, Advocate
for caveator-respondent No.1.

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AMIT RAWAL J. (ORAL)

C.M. No.8005-C of 2016

For the reasons stated in the application, delay of 14 days
in re-filing of the appeal is condoned.

Application is allowed.

RSA No.2995 of 2016

The present regular second appeal is directed against the
concurrent finding of fact whereby suit of the respondents-plaintiffs
injunction the appellants-defendants/counter-claimants has been
decreed and affirmed in appeal.

The respondents-plaintiffs instituted the suit for
permanent injunction seeking restraint against the appellants-
defendants/counter-claimants qua forcible interference and
dispossession in respect of land measuring 1 bigha 6 biswas
comprising of khasra No.1111(0-5), 1177 (1-1) situated in the
revenue estate of village Handesra, Tehsil Dera Bassi, District SAS

Nagar on the premise that there was already a compromise in matter pending before the lower Appellate Court, resulting into judgment dated 12.11.2001 and affirmed in this Court whereby defendants became co-owners to the extent of half share in the property in dispute. Defendants No.2 and 3, sons of defendant No.1, claimed their share in the suit property whereas they have no concern.

Upon notice, appellants-defendants/counter-claimants alleged that compromise dated 27.07.1992 was acted upon whereby defendant No.1 Hardev Singh held to be co-owner to the extent of half share. The entries in the revenue record were contrary and liable to be rectified, thus, set up a counter-claim that defendant No.1 is joint owner in possession to the extent of half share in the land measuring 1 bigha 6 biswas comprising of Khewat No.118, Khatoni Nos.196, 197 and Khasra Nos.1111(0-5), 1177 (1-1) situated within the revenue estate of village Handesra, Tehsil Dera Bassi.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether plaintiffs are entitled to permanent injunction as prayed for? OPP*
- 2. Whether the defendants are entitled the relief as claimed in the counter claim? OPD*
- 3. Relief.”*

Both the parties led extensive evidence. Plaintiffs brought on record Ex.P1 to P14 i.e. certified copies of judgments and decrees, copy of order passed by this Court in RSA No.379 of 2002 and mutation etc. whereas defendants tendered document Ex.D1 to

D4.

Mr. K.S. Sidhu, learned Senior Counsel assisted by Mr. Dushyant Sarvesh, learned counsel appearing for the appellants-defendants submitted that the lower Appellate Court did not pass the order being the last court of fact and law in consonance with the provisions of Order 41 Rule 31 CPC, as it reveals from copy of previous judgment. There is no reference to the contents of compromise Ex.D4 and decree whereby Hardev Singh was granted half share out of 1/3rd share of Ajmer Kaur and *bara*. It was further argued that Ram Chand was owner of the property measuring 101 bighas 4 biswas and *bara* measuring 1 bigha and 6 biswas. He had two sons Ram Krishan and Hardev Singh and mother Ajmer Kaur. On her demise, mutation was effected to the extent of 1/3rd share each. Ajmer Kaur bequeathed her share in favour of sons of Ram Krishan by way of Will, which was challenged in appeal. The compromise was effected resulting into decree of 2001, therefore, it is a fit case where matter requires to be re-examined by the lower Appellate Court as the appellants-defendants/counter-claimants have been deprived the right to raise all the points in appeal in terms of Section 96 CPC.

Notice of motion.

Mr. Sushil Jain, Advocate accepts notice for respondent No.1 and submitted that concurrent finding of fact and law cannot be interfered unless and until there is gross illegality and perversity. It is not a case where lower Appellate Court had non-suited the appellants-defendants in not referring to contents of compromise and

the decree.

I have heard learned counsel for the parties and appraised the paper book. The operative part of the judgment of the trial Court and lower Appellate Court was read out openly in the Court and after reading out, it is clear that finding of lower Appellate Court is copy of finding of trial court, not controverted by Mr. Jain, which is not being extracted for the sake of repetition. It is a compelling reason to even call for comments of the Presiding Officer of lower Appellate Court with regard to tenor and mode of judgment. The provisions of Order 41 Rule 31 CPC enjoins upon an obligation on the lower Appellate Court to formulate points of determination being last court of fact and law. In many cases, it has been seen by this Court that pith and substance of judgment of lower Appellate Court is a mere extraction of finding rendered by the trial Court, compelling this Court to set aside the finding or remit the case. The lower Appellate Court even if had to affirm finding of the trial Court, required to give a reasoned judgment after formulating points of determination.

In view of the such circumstances, finding of lower Appellate Court would definitely be falling within the realm of perversity and the same is hereby set aside. The matter is remitted to the lower Appellate Court to decide the appeal afresh.

Let copy of this order along with judgment of trial Court and lower Appellate Court be sent to the District Judge, SAS Nagar, Mohali to call for comments of the Additional District Judge/Presiding Officer, who passed the judgment dated 21.07.2015

in Civil Appeal No.123 of 01.12.2014.

Parties are directed to appear before the lower Appellate Court on 04.07.2019.

The second appeal is disposed of in above terms.

(AMIT RAWAL)
JUDGE

May 10, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No