

In the High Court of Punjab and Haryana at Chandigarh

**RSA-2257 of 2015 (O&M)
Date of Decision: 12.12.2019**

Jog Singh and others

---Appellants

versus

Naib Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Kanwaljit Singh, Senior Advocate with
Ms. Payal Singla, Advocate
for the appellants**

**Mr. K.S.Sidhu, Senior Advocate with
Mr. G.S.Gurna, Advocate
for the respondents**

Rekha Mittal, J.

Challenge in the present appeal has been directed against judgment and decree dated 20.10.2014 passed by the Additional District Judge, Ambala whereby judgment and decree dated 28.5.2013 passed by the trial court dismissing suit of the respondents-plaintiffs was reversed while allowing the appeal with costs.

The respondents-plaintiffs filed the suit to challenge Power of Attorneys dated 11.8.1999, 16.8.1999, gift deed dated 23.8.1999 and sale deeds dated 10.9.2003 and 27.11.2003 primarily on the ground that Power of Attorneys aforesaid are forged and fabricated documents, therefore, transfer of suit land by appellant-Jog Singh on the basis of aforesaid Power of Attorneys in favour of his family members (defendants No. 2 to 4 therein)

cannot be allowed to sustain. They also prayed for declaring them as joint owners and in possession of the land in dispute.

Defendants No. 2 to 4 filed written statement on 18.3.2006 admitting claim of respondents-plaintiffs. Defendant no. 1 filed the written statement on 22.3.2006 admitting claim of the respondents-plaintiffs. Later, an application was filed for amendment of the written statement(s) to withdraw from admission but the same was dismissed by the trial court and the order has attained finality. Despite admitted written statements filed by the appellants-defendants, the trial court framed issues, noticed in the judgment of said court. The parties were permitted to adduce evidence.

Having heard counsel for the parties in the light of materials on record, the trial court dismissed the suit vide judgment and decree dated 28.5.2013 that became subject matter of appeal decided by the Additional District Judge, Ambala.

Perusal of judgment passed by the First Appellate Court would reveal that the Appellate Court decided the appeal on the basis of written statements filed by the appellants-defendants admitting claim of the respondents-plaintiffs by relying upon various judgments noticed in the judgment of said court and taking into consideration that the plaintiffs were not required to prove any of the admitted facts but despite this evidence was led by them. It has also been held that evidence led by the defendants is beyond pleadings and the same could not have been looked into by the lower court.

Counsel for the appellants would argue that once the trial court did not proceed to decide the case under Order XII Rule 6 of the Code of Civil Procedure (in short "the Code") in view of admission of the

appellants-defendants in the written statements and proceeded to frame issues and recorded evidence, the trial court has rightly decided the case on the basis of materials on record. It is further argued that the Court in Appeal without framing any questions for determination as to whether the suit could be decreed on the basis of admissions despite framing of issues and permitting the parties to adduce evidence, disposed of the appeal in a casual and perfunctory manner. It is further submitted that the matter may be remitted to the First Appellate Court for decision of the appeal afresh.

Counsel for the respondent-plaintiffs, on the contrary, has supported findings of the First Appellate Court in view of admission of claim of the plaintiffs by defendants and dismissal of their application for amendment of the written statement to withdraw from the said admission. It is further argued that respondents have proved on record that Jiwan Singh one of the executants of Power of Attorney dated 11.8.1999 died prior thereto, the said fact alone is sufficient to prove that Power of Attorneys are forged and fabricated documents.

I have heard counsel for the parties, perused the paper book and records.

Perusal of the judgment passed by the trial court would reveal that the trial court decided the case on the basis of evidence adduced by the appellants-defendants despite the fact that appellants-defendants filed admitted written statements. The trial court, in concluding lines of para 17 of the judgment, has held that plea of fraud raised by the plaintiffs is not proved and documents of 1999 Exs. P1 and P2 have been challenged in 2006 which shows that the suit has also not been filed within limitation.

Counsel for the respondents has fairly conceded that this finding on

the question of limitation has not been set aside by the Court in Appeal while allowing appeal filed by the respondents-plaintiffs. It is also undisputed position of the case that the First Appellate Court had not framed any questions for determination, in compliance with the provisions of Order 41 Rule 31 of the Code. In the given circumstances, there is no alternative except to set aside the decree and judgment passed by the First Appellate Court and the matter be remitted to the said court for decision of the appeal afresh by deciding the following questions:-

1. What is the effect of admissions made by the appellants-defendants in the written statements filed by them?
2. Since the trial court has not passed a decree on the basis of admission made by the appellants and proceeded with the trial, whether the suit could be decided on the basis of admission by ignoring evidence adduced by the parties?
3. Whether findings of the trial court on the question of limitation are correct or otherwise?

The Appellate Court would also be at liberty to decide any other question raised by counsel for the parties at the time of making arguments.

In view of what has been discussed hereinbefore, the appeal stands disposed of. The decree and judgment passed by the Appellate Court is set aside. The matter is remitted to the Appellate Court for decision of the appeal afresh, in accordance with law. Parties through their counsel are directed to appear before the Appellate Court on 16.1.2020. The Appellate Court shall decide the appeal within a period of three months of parties putting in appearance. In the meanwhile, parties shall maintain

status quo with regard to possession and ownership of the suit property.

(Rekha Mittal)
Judge

12.12.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No