

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

SAO No. 71 of 2016(O&M)

Date of Decision: July 17, 2019

Baba Karan Dass

.....Appellant

versus

Jagdev

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAMENDRA JAIN

Present:- Mr. Mani Ram Verma, Advocate and
Mr. Nipun Verma, Advocate
for the appellant.

None for the respondent.

RAMENDRA JAIN, J. (ORAL)

The plaintiff-appellant has laid challenge to the judgment of first Appellate Court dated 07.05.2016 whereby the case was remanded to the trial Court to decide the same afresh after impleading Gram Panchayat Bhandwa, as a party.

The brief facts are that the plaintiff claiming himself as Dohlidar in possession of the suit land measuring 84 kanals 10 marlas situated at village Bhandwa, District Bhiwani, filed a suit for permanent injunction against the respondent-Jagdev, pleading that the defendant illegally and forcibly interfered into his peaceful possession over the suit land and despite making several requests, he continued with his evil designs.

After holding trial, the suit of the plaintiff was decreed vide judgment and decree dated 29.11.2014.

Being aggrieved, the defendant-respondent preferred an appeal before the First Appellate Court, who after hearing both the sides, remanded the case to the trial Court with a direction to decide the same afresh after impleading Gram Panchayat, Bhandwa, as a necessary party.

Notice of this appeal was given to the respondent but he did not choose to contest the same. Hence, he was proceeded against ex-parte.

Heard.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this Court finds that the present appeal merits acceptance for the reasons to follow:-

The simpliciter suit of the plaintiff against the respondent was for permanent injunction to restrain him from interfering illegally and forcibly into his peaceful possession over the suit land, which was decreed by the trial Court, vide judgment and decree dated 29.11.2014 in toto. Vide judgment and decree dated 07.05.2016, the first Appellate Court remanded the case to the trial Court for decision afresh after impleading Gram Panchayat, Bhandwa, as a necessary party.

The stand of the respondent was that earlier the suit land was owned by the Gram Panchayat, which was being cultivated by him, being successor-in-interest of Dariya Singh, who was tenant over the same as gair-marusi for the last 20 years. The first Appellate Court failed to appreciate that it was only the respondent, who was creating hurdle in the alleged possession of the plaintiff and not the Gram Panchayat, though it was altogether a different matter as to who was the owner of the suit land. Therefore, restraining the respondent from interfering into the alleged possession of the appellant over the suit land for permanently did not confer any right, title or interest upon the appellant qua the suit land. Considering this aspect, the appellate Court ought not to have remanded the case, rather must have dismissed the appeal of the respondent with the

observation that judgment and decree passed by it confirming the judgment and decree of the trial Court would not confer any right or title or interest over the suit land in favour of either of the parties till the appellant/respondent establishes his ownership over the same by adopting due process of law.

In view of the discussion made above, the appeal is accepted. The judgment of the Appellate Court dated 07.05.2016 is set aside. Resultantly, the judgment and decree of the trial Court dated 29.11.2014 is upheld. However, the same would not confer any title, right or interest in favour of the appellant till he gets himself declared as owner of the suit land or any order favouring him from any competent Court of law.

17.07.2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No