

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

**(1) SAO No. 75 of 2016 (O&M)
Date of Decision: May 22, 2019**

White House Cinema, Ludhiana and others
.....APPELLANTS

VERSUS

Rajinder Kaur Gill and others
.....RESPONDENTS

(2) SAO No. 76 of 2016 (O&M)

White House Cinema, Ludhiana and others
.....APPELLANTS

VERSUS

Rajinder Kaur Gill and others
.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. G.S.Punia, Senior Advocate with
 Ms. Harveen Kaur, Advocate
 for the appellants.

Mr. Rakesh Gupta, Advocate
for respondents No. 1 and 2.

SURINDER GUPTA, J.(Oral)

Heard.

Plaintiffs/respondents No.1 and 2 filed suit seeking the
relief as follows:

*Suit for declaration that the plaintiffs are the owners in
possession of 60/117 share in land measuring 0B-5B-17B
Pukhta, comprising of Khewat No. 98, Khatauni No. 106,
Khasra No. 2194/668/669/15/3/2, b) land measuring 0B-11B-*

13B Pukhta, comprising of Khewat No. 107, Khasra No. 2151/683/3/2, 2151/686/3/2, 2155/693/3/2, 2156/693/3/3, 2178/12/2, 2179/12/3, 2180/13/1, 2195/668-669/15/3/3, as entered in the jamabandi for the year 1998-99, situated in Revenue Estate of Taraf Burara, Hadbast No. 168, Tehsil & District Ludhiana now popularly known as Ashok Nagar, Ludhiana and bearing Municipal No.B-XVII-478/1 as shown in red colour in the plan attached with the plaint and bounded as under:-

West: Remaining portion of property No.B-XVII-478/1 owned by Rajinder Kaur.

North: Property of Surinder Pal Singh

South: Sham Singh road

and the defendants have got no right, title or interest in the above said property and have no right to interfere in the ownership and possession of the plaintiffs over the said property; AND for the grant of permanent injunction restraining the defendants from interfering in the ownership and possession over the above said property, on the basis of oral and documentary evidence.

The suit was partly decreed by Additional Civil Judge (Senior Division), Ludhiana in following terms:

It is ordered that the instant suit of plaintiffs is partly decreed for permanent injunction and defendants are restrained from interfering into exclusive possession of the plaintiff over the suit property in forcible or illegal manner except in due course of law, while suit is dismissed as regards to relief of declaration as sought by plaintiffs. In the peculiar facts and circumstances of the case, since the contesting defendants are shown to be interest in subject matter of the suit, which interest was denied by plaintiffs through their plaint, parties are left to bear their own costs.

Plaintiffs filed appeal against the judgment and decree of the trial Court while defendants also preferred the appeal. The Ist Appellate Court remanded the case to the trial Court with the observations that vital issues as per the pleadings have not been framed. The plaintiffs have claimed their ownership and possession over the suit property and challenged the judgment and decree dated 16.05.1977 passed in Civil Suit No. 31 of 1977 titled as ***White House Cinema Versus Harpal Singh Gill***, passed by the then Sub-Judge, Ist Class, Ludhiana. Learned trial Court has not framed any issue with regard to the factum of legality of aforesaid judgment and decree.

Learned counsel for the appellants has argued that above observations of the Ist Appellate Court are not as per record. The plaintiffs have never challenged the decree dated 16.05.1977 passed in Civil Suit No. 31 of 1977 titled as ***“White House Cinema Vs. Harpal Singh Gill”***. They have only disclosed the fact of that decree in para 6, 7 and 8 of the plaint. Learned trial Court has discussed about this decree while recording findings on issue No. 1. It has also concluded that the plaintiffs are not entitled to declaration that they are exclusive owner of the suit property. While recording the findings on issue No. 1, it was observed that they are not entitled to declaration that they are exclusive owner of the suit property. The observations of the lower Appellate Court that proper issues were not framed is also erroneous as issue No. 1 framed in this case cover all the matter in dispute. The parties were aware of their pleadings and have led the evidence accordingly.

Learned counsel for the respondents has argued that the

plaintiffs in their re-joinder have alleged that the decree dated 16.05.1977 passed in the suit ***“White House Cinema Vs. Harpal Singh Gill”*** is illegal, null and void. No specific issue was framed in this regard. Learned Ist Appellate Court remanded the case as the findings on this issue will effect the findings on other issues as well, as such, the order of the Ist Appellate Court is valid under Order 41 Rule 25 CPC read with Section 23-A CPC.

On perusal of the plaint, I find that the plaintiffs have not challenged the decree dated 16.05.1977 passed in the Civil Suit ***White House Cinema Vs. Harpal Singh Gill***. They have only discussed the effect of that decree. Even otherwise, the trial Court discussed that decree and its effect and recorded the findings that plaintiffs are not entitled to declaration that they are exclusive owner of the suit property.

The question which arises for consideration is as to whether the trial Court has framed the issues as per the pleadings. Issue No. 1 framed by the trial Court reads as follows:

1. Whether the plaintiff is entitled to relief of declaration as prayed in the head note of the plaint ? OPP

The above issue is a comprehensive issue, under which all the pleas raised by the plaintiffs are covered. The parties were also aware of the controversy involved in the suit and led evidence. Even if the Ist Appellate Court feels that some vital issues have been left to be framed causing prejudice to either of the parties, it could proceed to frame the issue as per the provisions of Order 41 Rule 25 CPC, which reads as follows:

Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from- Where the Court from whose decree the appeal is preferred has omitted to frame

or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor within such time as may be fixed by the Appellate Court or extended by it from time to time.

The Ist Appellate Court in its order indicated the necessity of framing the issues but instead of framing the issues remanded the case with direction to the trial Court to frame issues and record the evidence of the parties in respect of the same and decide the suit afresh by recording appropriate findings.

Provision contained in Order 41 Rule 25 CPC authorises the Ist Appellate Court to frame issues as required and essential for right decision of suit and send the case to the trial Court for recording evidence on those issues and send its report. Instead of following the procedure as provided under Order 41 Rule 25 CPC, learned Appellate Court adopted a short cut method to dispose of the appeal by remanding the case on this score.

Learned counsel for the respondents has drawn my attention to the observations of the Hon'ble Apex Court in the case of ***REMCO Inds. Workers House Bldg. Co-op. Socy. Versus Lakshmeesha M.and others, 2003 AIR (SC) 3167.***

I have perused, the observations of the Hon'ble Apex Court in

para 18 of the case titled as ***REMCO Inds. Workers House Bldg. Co-op.***

Socy. Versus Lakshmeesha M. and others (Supra). The order of remand was passed in the peculiar facts and circumstances of the case as the trial Court in that case had not recorded the findings of title concerning the grant of occupancy right. In this case, learned trial Court has discussed all the facts and evidence on record while deciding the suit. Even the reference to the decree dated 16.05.1977 was also made. Under these circumstances, if the Ist Appellate Court is of the opinion that some issues have been left to be framed by the trial Court it could frame those issues specifically and then proceed further as per the provisions of under Order 41 Rule 25 CPC.

As a sequel of above my discussions, both the appeals have merits and are accepted.

The order passed by the Ist Appellate Court is set aside. Parties are directed to appear before the Ist Appellate Court/successor Court on 05.07.2019 on which date appeal file shall be taken on Board and proceeded further as per above observations. Before parting, it is pertinent to mention that any observations in this order shall not be treated as expression of view on the merits of the case.

May 22, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No