

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 45 of 2016 (O&M)

Date of Decision: 29.05.2019

Munni Devi and others

...Appellants

VERSUS

Chander Parkash and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Mehak Sawhney, Advocate
for Mr. Vinod S. Bhardwaj, Advocate
for the appellants.

Mr. Mukesh Kumar Mittal, Advocate
for the respondents.

SURINDER GUPTA, J. (Oral)

Heard.

2. Plaintiffs, Chander Parkash, Pradeep Kumar and Sanjay Kumar, filed suit seeking relief as follows:-

“Suit for declaration to the effect that the plaintiffs, defendants no. 4 and 5 and proforma defendants no. 6 to 23 are joint owners of gair mumkin land measuring 179 sq. yards 9 inches bounded as under:-

East : Circular road outside Parkota

West : Rasta share Aam at present

North : Memorial (Chhatri) of late Sh. Indermal Mahajan

South : Rasta share Aasm now unauthorizedly occupied by defendant no. 1.”

3. Learned Civil Judge (Junior Division), Charkhi Dadri decreed the suit of plaintiffs as follows:-

“It is ordered that the suit of the plaintiff has been

partly decreed with costs, to the effect that the plaintiffs, defendants no. 4 and 5 and proforma defendants are joint owners of the suit land and the remaining relief of plaintiff stands declined.”

4. Plaintiffs as well as defendant no. 1-Munni Devi preferred appeals against judgment and decree of learned trial Court and learned Additional District Judge, Bhiwani remanded the case to learned trial Court for fresh decision for the reasons as recorded in para 17 of the judgment as follows:-

“17. Since, the learned trial Court has not framed the complete issues in this case and has not returned the findings on all the issues and that the appellants have taken the objection in their grounds of appeal in this regard and the wrong framing of the issues has caused the miscarriage of justice, therefore, the same are liable to be re-framed after taking into consideration the relief for compensation for illegal use and occupation against the defendants no.1 to 3 and the findings of the learned trial court are also required to be returned afresh.”

5. Learned counsel for appellants has argued that instead of remanding the case, learned Ist Appellate Court could decide the appeal on merit. In case any issue was required to be framed, it could frame the same and call for the report from learned trial Court under Order XLI Rule 25 CPC.

6. Learned counsel for respondents has argued that learned trial Court has not framed issue “as to whether plaintiffs are entitled to

compensation for their illegal use and occupation of the suit land from defendants no. 1 to 3?” Though, plaintiffs were held to be joint owners of suit land with defendants no. 4 and 5 and proforma defendants but the relief of joint possession was not sought. Issues no. 1 and 2 were taken together but no finding was recorded on issue no. 2.

7. On perusal of judgment of learned trial Court, I find that issues no. 1 and 2 were taken together for decision. These issues read as follows:-

“1. *Whether the plaintiff is entitled to decree of declaration to the effect that the plaintiffs, defendant no. 4 and 5, proforma defendants no. 6 to 23 are joint owners of gair mumkin land as described in headnote of the plaint?*
OPP

2. *Whether plaintiffs are entitled to relief of permanent injunction as prayed for? OPP”*

8. While recording finding on these issues plaintiffs alongwith defendants no. 4 and 5 and proforma defendants were held to be joint owners in possession of the suit land being legal heirs of common ancestors. However, no finding was recorded on issue no. 2.

9. The question, which arises for consideration in this appeal, is as to whether order of lower Appellate Court remanding the case with the observation that trial Court has not returned findings on all the issues or that the appellants have taken objection regarding non-framing of issues, could be a reason for remanding the case? Order XLI Rule 25 CPC authorizes the Appellate Court to frame necessary issues if any material issue has been left to be framed by the trial Court and then refer the matter to the trial Court with direction to take additional evidence as required and

send its report alongwith findings on additional issues. Order XLI Rule 25 reads as follows:-

“25. 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.”

10. Learned Ist Appellate Court instead of framing any additional issue left to be framed by lower Court adopted a shortcut method to dispose of the appeal by remanding the case with direction to reframe the issues. The course open for learned Ist Appellate Court was to frame new issue, if any, arises from pleadings of parties. If any material issue arises in the case then call for the report of learned trial Court as per provisions of Order XLI Rule 25 CPC. If learned Ist Appellate Court is of the opinion that learned trial Court has not recorded any finding on any of the issues framed by it,

report of learned trial Court on that issue could also be called.

11. As a sequel of my above discussion, this appeal is accepted. Order dated 15.02.2016 passed by learned Ist Appellate Court setting aside judgment of learned trial Court and referring the matter for fresh trial is not legally sustainable, as such, is set aside.

12. Parties are directed to appear before learned Ist Appellate Court/successor Court on 05.07.2019, on which date appeal file shall be taken on board and proceeded further to dispose of the same in accordance with law.

May 29, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No