

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 39 of 2014 (O&M)

Date of Decision: 08.05.2019

Smt. Kaki and others

...Appellants

VERSUS

Sita Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arihant Jain, Advocate
for the appellants.

Mr. Abhishek Goyal, Advocate
for respondents no. 1 and 2.

SURINDER GUPTA, J. (Oral)

Suit filed by plaintiffs-appellants, seeking declaration of their 1/18th share in the suit property, was decreed by Civil Judge (Jr. Division), Sunam in following terms:-

“It is ordered that the suit of the plaintiffs be decreed with costs to the effect that plaintiffs are equal owner of 1/18th share i.e. 1 kanal 11 marlas out of land measuring 28 kanals bearing khata no. 97//190 mustil 191 killa no. 77//7/2/1 (2-18), 7/2/2 (1-2), 14 (8-0), 17/1 (3-9), 17/2 min (1-18), 17/2 min (1-11), 17/3 (1-2), 24 (8-0). Defendants has no concern with property in dispute and defendant no. 3 by personating herself as daughter of Arjan Singh executed sale deed no. 1222 in favour of defendants no. 1 & 2 which is wrong and illegal. On the basis of said sale deed mutation no. 1222 is sanctioned in favour of defendants no. 1 & 2 is illegal and void and defendants are hereby permanently restrained from

mortgaging selling the same to any other person.”

2. Against judgment and decree of learned trial Court Sita Singh and Narata Singh, defendants no. 1 and 2, filed appeal, which was accepted by Additional District Judge, Sangrur and the case was remanded to the Court below with direction to give proper opportunity to parties to prove their case.

3. Learned counsel for the appellants has argued that order passed by Ist Appellate Court is not tenable in the eyes of law as there was no application moved by appellants for permission to lead any additional evidence. They were provided opportunity to produce evidence and their evidence was not closed by order by learned trial Court. Ist Appellate Court could proceed to decide the case on merit. Application seeking amendment of written statement filed by appellants before Ist Appellate Court could also be decided by it instead of giving direction to appellants to file the same before learned trial Court.

4. Learned counsel for defendants-respondents has argued that plaintiffs have no concern with the suit property or right to challenge the sale deed executed by respondent no. 3. Defendants-respondents have not made any admission regarding share of plaintiffs in the suit property and have only pleaded that the concerned para required no reply. On the basis of plea taken in the written statement, which was also sought to be amended, no conclusion could be drawn that defendants-respondents have admitted the share of plaintiffs in the suit property. Keeping in view the above fact, Ist Appellate Court has rightly ordered remand of the case with direction to trial Court to decide the matter afresh.

5. While remanding the case, Ist Appellate Court took note of the

facts and evidence and observed in para 11 of the order as follows:-

“11. The plaintiffs are legal heirs of Gobindi alias Gobind Singh. They have claimed that Gobind Singh was son of Arjan Singh. Arjan Singh had three children Inder Singh, Gobind Singh and Chhoti. The case of the defendants is that there was no son of Arjan Singh named as Gobind Singh or Gobandi, while Gobindi alias Chhoti are one and same person. The plaintiffs have given pedigree table in para No.2 of the plaint showing three children of Arjan Singh. The defendants in their written statement in reply to this para pleaded that Para No.2 of the plaint needs no reply. However in the subsequent paras it is pleaded that Gobindi daughter of Arjan Singh was owner to the extent of 1/18 share in the suit land measuring 01 Kanal 11 Marlas and rightly executed the sale deed dated 16.08.2004 in favour of defendant No.2 Narata Singh. The plaintiffs claims that Chhoti had impersonated herself as Gobindi daughter of Arjan Singh in connivance with witnesses. The defendants have also filed an application under Order 6 Rule 17 of CPC seeking amendment of para No.2 on the ground that amendment is being made only to clarify the position and opposite party can be compensated with costs. The learned lower Court observed that para No.2 of the plaint regarding pedigree table is admitted. Therefore, the evidence produced by the defendants that

plaintiffs are not legal heirs of Gobindi alias Gobind Singh is not admissible. The counsel for the defendants argued that they have been non-suited on this ground only, while totality of their pleas should have been taken into consideration and they are further entitled to amend the plaint, He further argued that plaintiffs have been given 1/18 share in the land in dispute. If there were three children of Arjan Singh, then plaintiffs could not be given more than 1/27th share in the suit land as Arjan Singh was having 1/9 share in the suit land. Thus the relief granted by the learned lower Court is clearly against the facts and law. This position could not be disputed by the learned counsel for the plaintiffs also. The counsel for the appellant/defendants has also referred to 1991(2)-The Punjab Law Reporter-616 (P&H)-Kehar Singh Vs. Balraj Singh and others, where it has been held that it is open to party to show that the admission was wrong. In case the plaintiff (sic appellant) is not given opportunity to back out the wrong admission, he would not be able to show that the admission was wrong. The judgment and decree under appeal is therefore not sustainable in the eyes of law.”

6. Both the parties to the suit were aware of their pleadings and have led evidence on the basis of which learned trial Court has recorded its findings in judgment dated 06.09.2011. Ist Appellate Court was competent to reappraise the evidence and findings recorded by learned trial Court and

record its own findings on merits of the case filed by plaintiffs. From order passed by Ist Appellate Court it is not made out that the appellants have sought any permission to lead additional evidence. They have, however, moved application seeking amendment of written statement, which was not decided by Ist Appellate Court. The entire procedure adopted by learned Ist Appellate Court is not in accordance with provisions of Order XLI Rule 23, 23-A or 25 CPC. On filing of application seeking amendment of written statement, Ist Appellate Court was required to decide the same after taking reply of other party and then to proceed further in the appeal in accordance with law. Order passed by Ist Appellate Court remanding the case with observations that it is a fit case where parties should be given proper opportunity to prove their case is not tenable in the eyes of law.

7. Consequently, this appeal is accepted. Order passed by Additional District Judge, Sangrur dated 06.03.2014 is set aside. Parties are directed to appear before the Court concerned/successor Court on 30.05.2019, on which date, file of Civil Appeal No. 112 of 17.09.2011 will be taken on board and proceeded further for its disposal in accordance with law. Before proceeding to decide the appeal the Ist Appellate Court will dispose of the application filed by appellants seeking amendment of written statement, frame fresh issues, allow opportunity to parties to lead evidence, if so, required and proceed further as per provisions of Order XLI Rule 25/28 CPC.

May 08, 2019

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No