

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 56 of 2014 (O&M)
Date of Decision: 21.05.2019

Gulzar Singh and others

...Appellants

VERSUS

Megh Nath and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Atul Gaur, Advocate
for Mr. Sumeet Goel, Advocate
for the appellants.

Mr. R.S. Budhwar, Advocate
for respondents no. 1 to 6.

SURINDER GUPTA, J. (Oral)

Heard.

Plaintiff-Hukmi Devi (since deceased), now represented by her
legal heirs, filed suit seeking the relief as follows:-

“Claim that a decree for declaration to the effect that civil court decree dated 22.07.1989 passed in civil suit no. 305/89 in case Re. Guljar Singh Vs. Kartar Singh by Shri K.R. Goel, the then Sub Judge 1st Class, Kaithal in respect of suit land fully detailed and described in para no. 1 of the plaint above and mutation no. 2307 entered on the basis of said decree and mutation no. 2879 entered on the basis of inheritance of Smt. Bhajan Kaur in respect of suit land and the jamabandi entries for the year 1993-94 and 1998-99 in respect of suit land in the favour of plaintiff no. 1 to 4 and their predecessor in interest Smt. Bhajan Kaur are null & void and are not binding upon

the rights of the proprietors of village Bhuna including the plaintiffs and further a decree for possession in respect of suit land fully detailed and described in para no. 1 of the plaint above and further a decree for permanent injunction restraining the defendants no. 1 to 4 from alienating the suit land to any one may kindly be passed with costs in favour of plaintiffs and against the defendants no. 1 to 4. Any other relief for which plaintiffs are found entitled to be also awarded to them.”

The suit was dismissed and appeal against judgment and decree passed by learned lower Court was filed before Additional District Judge, Kaithal. In appeal, learned Ist Appellate Court passed order dated 03.09.2014 setting aside judgment and decree of learned lower Court with direction to decide the same afresh after affording opportunity to parties to tender in evidence judgment and decree dated 22.07.1989 passed in Civil Suit No. 305 of 1989 but at the same time the appeal was also kept in abeyance for further proceedings after decision of the suit. While remanding the case and setting aside judgment of lower Court, the fact which weighed before learned Ist Appellate Court, was that the suit property is public property which vests in *gram panchayat* and *gram panchayat* in collusion with defendants had suffered a decree against it.

The short question, which arises for consideration in this appeal, is as to what is the outcome of appeal filed before Additional District Judge, Kaithal? In case judgment and decree of learned trial Court has been set aside there was no reason for the lower Appellate Court to keep the appeal in abeyance and wait for the decision of civil suit. In case

appeal was kept pending, there could not be any order of remand with direction to learned trial Court to decide the civil suit afresh. From tone and tenor of order passed by the lower Appellate Court it appears that learned trial Court was impressed to permit the party to lead additional evidence and also to take into consideration that the suit property is public property and court of law is custodian of the same. Directions as given in the impugned order are not specific. In case learned Ist Appellate Court had to give some direction to learned lower Court to record additional evidence, the same is required to be specific.

Keeping in view above facts, I am of the considered opinion that ambiguous order passed by learned Additional District Judge, Kaithal deserves to be set aside with direction to learned Ist Appellate Court to proceed further to decide the appeal on merit. In the event of remand or report of learned trial Court is required on any fact or additional issue a specific order to this effect shall be passed.

As a sequel of my above discussion, this appeal has merit and is accepted. Order passed by learned Ist Appellate Court is set aside being not legally sustainable.

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 21, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No