

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 61 of 2014 (O&M)
Date of Decision: 16.05.2019

Gurudwara Baba Darvesh Hari Jee Sant Sabha

....Appellant

VERSUS

Bharpoor Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Baldev Sodhi, Advocate
for the appellant.

Mr. S.M. Sharma, Advocate
for respondent no.1.

None for respondent no.2.

SURINDER GUPTA, J. (Oral)

Heard.

2. Plaintiff-appellant filed suit seeking declaration that it is owner in possession of suit property on the basis of Gift Deed dated 01.09.1978, registered on 26.09.1978 in its favour by Sadhu Singh and Gurcharan Singh sons of Mitha Singh. The legality and validity of Will dated 04.09.1978 alleged to have been executed by Sadhu Singh and judgment and decree suffered by Gurcharan Singh dated 26.08.1989 regarding their share in the suit property, were challenged as illegal, null and void.

3. Defendants while contesting claim of plaintiff also filed counter-claim for declaration that Gift Deed registered on 26.09.1978 executed by Sadhu Singh and Gurcharan Singh in favour of plaintiff is illegal, null and void.

4. Learned Civil Judge (Junior Division), Ambala City vide judgment dated 11.04.2011 decreed the suit of plaintiff and dismissed the

counter-claim of defendants. In appeal, learned Ist Appellate Court remanded the case to learned trial Court with direction to decide it afresh on the ground as follows:-

“Defendants in their written statement have taken objection that suit land was ancestral property, as such, Gift Deed in favour of plaintiff was bad but no specific issue was framed in this regard.”

5. Learned counsel for the appellant has argued that well reasoned judgment of learned trial Court could not be set aside on the mere ground that issue with regard to objection as raised by defendants in their written statement was not framed. In fact parties were aware of the controversy in the suit and have also led evidence to prove their case. The plea raised by defendants is covered under issues no. 3 and 7. Learned trial Court has discussed the plea taken by defendants while deciding these issues. Even otherwise, if learned Ist Appellate Court is of the opinion that some issues have not been framed as per pleadings of parties, it is all competent to frame additional issues and proceed to decide the same if fresh evidence is there on the file or send the matter to learned trial Court to record the evidence on those additional issues and send report.

6. Learned counsel for respondents submits that nature of suit property is the basic question required to be decided in this case. In the event of suit property being held as joint Hindu coparcenary property, the plea of defendants that Gift Deed in favour of plaintiff is illegal, null and void, will be accepted. Though, learned trial Court discussed this fact but no finding on this issue was recorded.

7. Contentions of learned counsel of parties draw my attention to

provisions of Order XLI Rule 25 CPC, which 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.”

8. It is evident from perusal of above provision that if the Appellate Court is of the opinion that some relevant issue has not been framed by the trial Court and same is essential for the right decision of the suit on merit, it may frame such issue and then refer the matter to the trial Court to record additional evidence and send the same to Appellate Court with its findings on that issue. In this case, learned Ist Appellate Court has not framed any additional issue. In case learned Ist Appellate Court was of the opinion that some additional issues are required it was incumbent upon it to proceed in accordance with provisions of Order XLI Rule 25 CPC.

Instead of proceeding further as per above provisions, learned Ist Appellate Court has adopted a short-cut method to dispose of the appeal by remanding the case.

9. Learned counsel for respondents further submits that two appeals were filed and a common order was passed in both the appeals, as such, one appeal is not maintainable.

10. There was one suit in which counter-claim was filed. Against decreeing of the suit and dismissal of counter-claim two separate appeals were filed. As common order was passed in both the appeals, single appeal filed by the appellant is maintainable and objection raised by learned counsel for respondents is held as not sustainable.

11. As a sequel of my above discussion, this appeal has merit and is accepted. Order dated 15.09.2014 passed by learned Ist Appellate Court is perverse and not sustainable in the eyes of law, as such, is set aside.

12. Parties are directed to appear before learned Ist Appellate Court/successor Court on 31.05.2019, on which date appeal files shall be taken on board and proceeded further to decide the same in accordance with law.

May 16, 2019

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No