

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

**RSA No.3996 of 2018 (O&M)
Date of Decision: 11.07.2019**

Bidhi Chand

.....Appellant

Vs

**Tribhuvan Singh @ Triburan Singh through LR's and others
....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. G.S. Jaswal, Advocate
for the appellant.

Mr. S.D. Sharma, Sr. Advocate with
Mr. K.R. Sharma, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. This appeal has been remanded by the Hon'ble Apex Court vide order dated 08.04.2019 for hearing in the preliminary hearing for the purposes of admission or dismissal.

[2]. CM No.5402-CII of 2019 in the present Regular Second Appeal was filed by learned counsel for the respondents for bringing on record the certified copy of the aforesaid order of the Hon'ble Apex Court.

[3]. Notice of the application was issued to the non-

applicant/appellant as well as to Mr. Sarabjit Singh Khaira, Advocate. Office of Mr. Sarabjit Singh Khaira, Advocate communicated to the Registry that the brief has been taken away by his client. Thereafter, Mr. G.S. Jaswal, Advocate appeared on behalf of the appellant.

[4]. Since the appeal was restored by the Hon'ble Apex Court, therefore, the appeal was ordered to be listed in urgent list vide order dated 16.05.2019 in the presence of both the parties.

[5]. I have heard learned counsel for the parties in preliminary hearing.

[6]. This Regular Second Appeal has been preferred against the judgment and decree dated 24.05.2018 passed by the District Judge, Pathankot whereby the decision of the trial Court dated 16.10.2013 was upheld.

[7]. Brief facts of the case are that Tribhuwan Singh @ Triburan Singh (since deceased) through his legal representatives filed a suit for possession in respect of the suit property against the defendants namely Bidhi Chand and Amar Singh. It was alleged by the plaintiff(s) that Smt. Prabhi Devi widow of Sh. Bodh Raj was owner of the suit property. She died on 12.04.1995. Her husband had pre-deceased her as he had

expired before 1950. Smt. Prabhi Devi died intestate. Plaintiff(s) further alleged that defendant No.1 filed a Civil Suit No.159 dated 02.05.1995 against Ram Kishan, Saran Dass, Sarishta Devi and Triburan Singh for declaration, claiming himself to be legal representative of Smt. Prabhi Devi on the basis of Wills dated 18.12.1989 and 21.03.1995. Sarishta Devi was impleaded as defendant No.3 and plaintiff-Tribhuvan Singh @ Triburan Singh was impleaded as defendant No.4 in the said suit. Defendants in the said suit contested the suit filed by Bidhi Chand. The suit was dismissed by the Civil Judge (Jr. Divn.) Pathankot vide order dated 26.07.1999. Issue No.6 framed in the aforesaid suit was in respect of inheritance of Triburan Singh in respect of suit property as LR of deceased Prabhi Devi. Issue No.6 framed in the Civil Suit No.159 dated 02.05.1995 was to the following effect:-

“6. *Whether defendant No.4 inherited the suit property as LR of deceased Prabhi Devi? OPD*”

[8]. The aforesaid issue No.6 was decided in favour of Sarishta Devi and Triburan Singh and against the plaintiff Bidhi Chand and defendants No.1 and 2 namely Ram Kishan and Saran Dass. Bidhi Chand (plaintiff in Civil Suit No.159 of 02.05.1995) filed appeal before the Addl. District Judge Gurdaspur against judgment and decree dated 26.07.1999

passed by the trial Court. The appeal was dismissed vide judgment and decree dated 20.05.2004. Feeling aggrieved against the said judgment and decree passed by the lower Appellate Court, Bidhi Chand filed RSA No.2357 of 2004. The said appeal was disposed of vide order dated 02.12.2004 by the High Court. During course of arguments before the High Court, learned counsel for the appellant-Bidhi Chand did not challenge the validity of Wills and submitted that the claim of the plaintiff/appellant based on Wills dated 18.12.1989 and 21.03.1995 would be deemed to have been given up by the plaintiff and, therefore, he relinquished the relief of ownership in the suit property. He however submitted that plaintiff in para nos.9 and 12 of the plaint had claimed that the plaintiff was tenant over the suit property and relied upon certain documents. Learned counsel for the respondents controverted the same and submitted that the appellant was in unauthorized possession and lawful proceedings shall be instituted against the appellant. On the said submission, learned counsel for the appellant gave his no objection to the contention of learned counsel for the respondents. Accordingly the judgment and decree of the lower Appellate Court was modified only to the extent that the plaintiff/appellant (Bidhi Chand) in RSA No.2357 of 2004 was not to be evicted from the suit property except in due course of

law. That is how the present suit for possession came to be filed by the LR's of plaintiff Triburan Singh.

[9]. The suit was contested by the defendant No.1 on number of grounds. Defendant No.2-Amar Singh also set up counter claim seeking joint possession of the suit property and the house with the plaintiff as against defendant No.1 on the ground that plaintiff and defendant No.2 were joint owners of the suit property and were also entitled to joint possession of the suit land and house.

[10]. On the basis of the pleadings of the parties and the counter claim set up by defendant No.2, following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled to possession of the suit land and house in dispute? OPP
2. Whether the plaintiff and defendant No.2/counter claimant are entitled to decree for joint possession of the suit land and house in dispute? OPD(2) Counter claimant.
3. Whether the counter claim is not maintainable? OPP
4. Whether the counter claimant has no locus standi to file the counter claim? OPP
5. Whether the suit is bad for non-joinder of necessary parties? OPD(1)
6. Whether the suit has been properly valued for the purposes of Court fee and jurisdiction? OPP
7. Whether this court has no jurisdiction to try and entertain the present suit? OPD(1)
8. Relief.”

[11]. Evidently, in view of decision of RSA No.2357 of 2004 (Ex.P-9) defendant No.1 was to be ejected only in due course of law. Sarishta Devi was held to be owner of half share. Mutation was sanctioned in favour of the plaintiff and Sarishta Devi (Ex.D-3). Sarishta Devi died issueless and her husband Amar Singh-defendant No.2 had set up a counter claim. As per *shazra nasab* the property in the hands of Prabhi Devi was inherited by Sarishta Devi through Raghubir Singh in view of mutation Ex.D-3. According to Hindu Succession Act, if a woman dies issueless, then her property has to be reverted back to the family from where she has succeeded the same. In view of mutation Ex.D-3, Sarishta Devi had succeeded the property of Prabhi Devi, who was her aunt from maternal family. Plaintiff Tribhuvan Singh @ Triburan Singh was the only legal heir from maternal family, therefore, he was held to be owner of the property which was left by Sarishta Devi as well as Prabhi Devi. Sarishta Devi had inherited the property of Prabhi Devi through Raghubir Singh i.e. her father. Having died issueless, the property had to be reverted back to the legal representatives of the family from where she had inherited the same. The plaintiff was held to be successor of Sarishta Devi as well as Prabhi Devi on the aforesaid premise.

[12]. In view of above, the counter claim as set up by

defendant No.2 was negated. Since the plaintiff was held to be successor of Sarishta Devi and Prabhi Devi, therefore, under issue No.1, he was held entitled for possession of the suit property. Defendant No.1 could not lead any evidence to show his tenancy over the suit property. In order to oust the jurisdiction of the civil Court on the basis of tenancy, defendant No.1 was required to lead evidence under issue No.7.

[13]. While deciding issues No.5 and 7, the trial Court in para No.14 recorded the following observation:-

"Issue No.5 and 7

14. Onus to prove these issues was on the defendants but learned counsel for the defendants did not press these issues at the time of arguments nor any evidence has been led on the same. Hence these issues are decided against the defendants and in favour of plaintiff."

[14]. Perusal of the aforesaid recital would show that learned counsel for the defendants did not press the aforesaid issues. Evidently, no evidence was led in respect of issues No.5 & 7. Plea of tenancy could not be proved. Possession of defendant No.1 was found to be unauthorized and in view of findings recorded under issues No.1 and 2, the trial Court decreed the suit. Issues No.3, 4 and 6 were also decided in favour of the plaintiff(s) on the basis of findings recorded under issues No.1

and 2. Since defendant No.1 did not press issue No.7, nor led any evidence in the context of his tenancy, therefore, the suit was decreed on the basis of plaintiff(s) being successor of Sarishta Devi as well as Prabhi Devi.

[15]. Defendant No.1 filed appeal before the lower Appellate Court against the judgment and decree dated 16.10.2013 passed by the Addl. Civil Judge (Sr. Divn.) Pathankot. In the grounds of appeal, no challenge was made to the findings recorded by the trial Court under issues No.5 and 7, whereby the said issues were not pressed by learned counsel for the defendants at the time of arguments, nor any evidence was led on the aforesaid issues.

[16]. The lower Appellate Court in para No.42 of the judgment dated 24.05.2018 also recorded that issues No.5 and 7 were not pressed by learned counsel for the defendants, nor any evidence was led on these issues. The issues were correctly decided by the trial Court and the findings recorded by the trial Court on the aforesaid issues were affirmed by the lower Appellate Court as well. Consequently, the appeal was dismissed vide judgment and decree dated 24.05.2018 passed by the District Judge, Pathankot. Against the aforesaid judgment and decree, the present Regular Second Appeal has been preferred.

[17]. Learned counsel for the appellant sought to argue the case on the basis of tenancy. Learned counsel was specifically asked to show whether the findings recorded by the trial Court under issues No.5 and 7 have been challenged by the appellant in the first appeal as well as in the present Regular Second Appeal.

[18]. Perusal of the grounds of appeal before the lower Appellate Court as well as of this Court would show that there is no challenge made to the findings recorded by the trial Court under issues No.5 and 7 which were upheld by the lower Appellate Court. Since the findings under issues No.5 and 7 have not been challenged, therefore, this Court proceeded to notice the legal position on the aforesaid subject.

[19]. A statement of fact was made by learned counsel for the defendants before the trial Court, when he did not press the issues No.5 and 7. What was transpired during course of hearing before the trial Court cannot be appreciated by any other Court at a subsequent stage. Defendant No.1 cannot be allowed to resile from the statement of fact made before the trial Court. Even the defendant No.1 did not challenge the findings recorded by the trial Court under issues No.5 and 7 in the first appeal as well as in the present Regular Second Appeal. The Appellate Court cannot launch inquiry as to what transpired

before the trial Court when learned counsel for the defendants made such a statement leaving issues No.5 and 7 as unpressed. Public Policy bars the Appellate Court to comment upon anything which was subject matter of relinquishment made by learned counsel for the defendants before the trial Court. Judicial decorum restrains the Court from commenting upon such a feature which was not a subject matter of Appellate Court. The matters of judicial record are unquestionable and the same are not open to doubt. The Court cannot be dragged into the arena and the judgment cannot be treated as mere counters in the litigation. Giving up issues No.5 and 7 was recorded by the trial Court in the judicial order in judicial discipline.

[20]. The aforesaid aspect has to be treated as last word on the subject in the absence of any challenge to the same before the same Court by the defendants by moving an appropriate application. It is a settled position that statements of fact as to what transpired at the time of hearing recorded in the order by the trial Court are conclusive of the fact so stated in the judgment and no one can question such statements. If a party thinks that the happenings in Court have been wrongly recorded in the judgment, it is incumbent upon the party while the matter is fresh in the minds of Judges to call the attention of the very Judge, who has made the record to the fact that the statement

made with regard to his conduct was a statement that had been made erroneously. This is the only procedure/way to get the record corrected. No one can be allowed to raise any finger on the findings recorded by the Court and the same has to be treated as final and decisive. The only remedy available to the aggrieved party/defendants was to approach the same Court by way of seeking clarification in the context of making statement before the trial Court while giving up issues No.5 and 7.

[21]. I am squarely fortified in my view on the strength of **State of Maharashtra vs. Ramdas Shrinivas Nayak and another, 1982 AIR (SC) 1249** which was subsequently reiterated in **Commissioner of Customs, Mumbai vs. Bureau Veritas and others, (2005) 3 Supreme Court Cases 265; Jagvir Singh & Ors., vs. State (Delhi Admn.), 2007(3) R.C.R. (Civil) 375**, and **Om Parkash vs. Principal, Government Sr. Secondary School, Nilokheri and others, 2012(19) R.C.R (Civil) 279**.

[22]. In view of aforesaid legal position, the only course available with defendant No.1 was to approach the same Court by moving an appropriate application for seeking correction of record. No such application was filed by the defendants before

the trial Court, rather no challenge was made to the findings recorded by the trial Court under issues No.5 and 7, nor any challenge was made to the aforesaid findings in the present Regular Second Appeal. In the absence of any such challenge, the matter must necessarily end. Reference can also be made to **Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd., 2002 AIR SCW 4939** in the aforesaid context.

[23]. Learned counsel for the appellant sought to raise issue of jurisdiction with reference to the precedents viz. **Munni Devi vs. Ashok Kumar, 1989(2) HLR 217**; **Shyam Lal vs. Deepa Dass Chela Ram Chela Garib Dass, 2015(2) R.C.R. (Civil) 198** and **Municipal Corporation, Ludhiana vs. M/s A. One Builders, (P&H) 2017(4) PLR 502**. In the light of findings recorded by the Courts below in respect of not pressing the issues No.5 and 7 by learned counsel for the defendants and having laid no challenge to the aforesaid findings before the Courts below and even in the present appeal, the question posed by the appellant cannot be gone into as no evidence was led by the appellant on the issue of tenancy before the Courts below.

[24]. In view of above factual position on record, the appellant/defendant No.1 cannot be allowed to rake up the issue of tenancy for which he was required to lead evidence on

record under issue No.7. Having not pressed the issue in question and having not led any evidence to that effect, defendant No.1 cannot be permitted to say that he was the tenant over the suit property.

[25]. In RSA No.2357 of 2004, possession of defendant No.1/appellant was held to be unauthorized. He was to be dispossessed only in due course of law. Plaintiff Tribhuvan Singh @ Triburan Singh, who was defendant No.4 in the earlier suit was held to have inherited the suit property as legal representative of Prabhi Devi. After the demise of Sarishta Devi, he again inherited the property left by Sarishta Devi being only legal representative from her maternal family. Since the property was reverted back to the family from where Sarishta Devi had inherited the same, therefore, the findings of facts recorded by both the Courts below are not found to be the result of any misreading of evidence or suffered with any perversity. No question of law worth consideration is involved in the present appeal. The appeal is found to be totally devoid of merits and is accordingly dismissed.

July 11, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No