

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

S.A.O. No. 50 of 2018 (O&M)
Date of decision: May 10, 2019

Surjit Kaur

... Petitioner

Vs.

Bhagwant Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. C.M. Munjal, Advocate
for the appellant.

Ms. Harshita, Advocate
for respondents no.1 and 3.

Mr. Vineet Chaudhary, Advocate
for respondent no.2.

SURINDER GUPTA, J

Plaintiff-Surjeet Kaur filed suit seeking relief of declaration as follows :-

“Suit for declaration to the effect that the General Power of Attorney bearing Vasika No. 4170 dated 24.1.2006 allegedly executed by the plaintiff and performa defendant No.3 in favour of defendant No.1 to the extent of right to sell, alienate/mortgage etc. is illegal, null and void being result of fraud.”

In the above suit, pleadings of the parties led to the framing of issues as follows :-

- 1. Whether the plaintiff is entitled to the decree of declaration as prayed for?OPP*
- 2. Whether the suit of the plaintiff is not maintainable in the present form?OPD*

3. *Whether the plaintiff has got no locus-standi to file the present suit?OPD*
4. *Whether the plaintiff is estopped from filing the present suit by her own act and conduct?OPD*
5. *Whether the plaintiff has not come to the court with clean hands?OPD*
6. *Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD*
7. *Whether the plaintiff has no cause of action?OPD*
8. *Whether proper court fee has not been paid by the plaintiff?OPD*
9. *Whether this court has no jurisdiction to entertain and try the present suit?OPD*
10. *Relief.”*

Civil Judge (Junior Division), Dera Bassi, recorded the findings on issue no.1 and 3 to 9 in favour of plaintiff-appellant. Findings on issue no.2 were recorded against the plaintiff and her suit was dismissed being not maintainable.

Plaintiff filed appeal before Additional District Judge, S.A.S. Nagar Mohali and vide order dated 1.3.2018 passed by the learned appellate court the case was remanded to the trial court for decision afresh for the reasons as follows :-

- (i) The findings of trial court on issue no.2 were reversed.
- (ii) Application of respondents before the first appellate court under Order 41 Rule 27 CPC seeking permission to lead additional evidence was allowed.
- (iii) In view of the above, findings of Civil Judge (Junior Division), Dera Bassi on issues no.1 and 3 to 9 were set aside.

On perusal of the order under appeal, I am of the considered

opinion that first appellate court has fell in procedural as well as legal error while remanding the case. The findings of the trial court on issue no.2 were set aside mainly on the ground that no specific issue was framed that suit was barred under Order 2 Rule 2 of CPC. If the first appellate court was of the opinion that that proper issue had not been framed, it could frame additional issue and then refer the matter to the trial court with direction to record additional evidence if so required on the additional issue and send the same to the appellate court together with its findings thereon as per provisions of Order 41 Rule 25 of CPC.

On allowing of additional evidence, the procedure for the first appellate court has been prescribed under Order 41 Rule 28 of CPC which reads as follows :-

“28. Mode of taking additional evidence – Where additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate court, to take such evidence and to send it when taken to the Appellate Court.”

First appellate court instead of following the procedure as prescribed under Order 41 Rule 25 and 28 of CPC, adopted a short cut method and disposed of the appeal by remanding the same. The findings of the trial court on issue no.1 and 3 to 9 were set aside without discussing the same on merits for the reasons that additional evidence had been allowed and the findings of trial court on issue no.2 have been set aside. The order dated 1.3.2018 passed by the Additional District Judge, S.A.S. Nagar Mohali remanding the case to trial court is perverse and not sustainable in the eyes of law, as such is set aside.

before the first appellate court/successor court on 30.5.2019 on which date the file of Civil Appeal No.RT-191/28.2.2014/26.7.2016 will be taken up and proceeded further as per provisions of Order 41 Rule 25 and 28 of CPC.

May 10, 2019

deepak

**(Surinder Gupta)
Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No