

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

207

SAO-80-2018 (O&M)
Date of Decision : 02.09.2019

Sawal Dass (since deceased) through his LR Appellant

Versus

Gopal Prasad and others Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Akshay Kumar Goel, Advocate
for the appellant.

RAMENDRA JAIN, J. (ORAL)

Through this appeal, appellant-defendant No.1 has preferred this appeal against the judgment and decree dated 17.03.2018, whereby lower Appellate Court, setting aside the judgment and decree of the trial Court dated 12.02.2014, remanded the case to trial Court for fresh decision.

Briefly, respondent No.1 filed a suit against the appellant impleading 44 others as his co-defendants qua possession of a double storied residential house bearing Municipal Unit No.N-365 measuring about 200 square yards, fully detailed in the judgment of the trial Court, pleading that the said house initially was owned by Mangal Chand and after his death by his son Ram Chander through a family settlement. After the death of Ram

Chander, his son Jamuna Parhsad became owner of the said house. Mangal Chand had four sons namely Ram Chander, Ganga Sahai, Chiranji Lal and Mohan Lal. Chiranji Lal and Mohan Lal died issueless. Ram Chander was survived by Jamuna Parsad. Ganga Sahai was survived by Shiv Narain, who was further survived by defendants No.23 to 45, whereas Jamna Parsad was survived by defendants 1 to 22 including the plaintiff. A family settlement took place amongst them. According to which, the house in dispute came to the share of Jamuna Parsad. The said house was ancestral property of the parties in which respondent No.1-plaintiff had 18% share and thus was entitled for possession of the same to that extent.

After holding trial, learned trial Court dismissed the suit vide judgment and decree dated 12.02.2014 on two grounds i.e. (i) the suit for partial partition was bad in law (ii) the house in dispute was left for common purposes by ancestors, therefore, it could not have been partitioned as asked for.

Being aggrieved, Gopal Dass, respondent No.1/plaintiff approached the First Appellate Court, who remanded the case to trial Court while setting aside the aforesaid judgment and decree dated 12.02.2014 for fresh decision.

Learned counsel for the appellant contends that the Appellate Court has wrongly dismissed the suit of respondent No.1/plaintiff for non-joinder of necessary party, without

appreciating the fact that there was no such finding of the trial Court nor any necessary party was left. The Appellate Court instead of remanding the case ought to have decided the appeal itself on merits after appreciation of evidence led by both the sides.

Notice of this appeal was sent to respondent No.1/plaintiff through registered post. The same did not come back either served or otherwise. Therefore, drawing presumption under Order 5 Rule 9 CPC after elapsing of one month, a co-ordinate Bench of this Court, when no one came forward to represent respondent No.1-plaintiff to contest this appeal, proceeded him *ex parte*.

Heard.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this Court finds the instant appeal merits acceptance for the reasons to follow.

Suit of the respondent No.1-plaintiff was for possession only qua property situated at Bhiwani. Qua other property situated at Mujjafarpur, respondent No.1-plaintiff had filed a separate suit at Mujjafarpur, Bihar, without including the suit property. Therefore, this Court is of the considered view that both the properties situated at different places at Mujjafarpur and Bhiwani could be partitioned in separate suit amongst the parties. The lower Appellate Court did not ever hold that suit was bad on account of

non-joinder of necessary parties, but dismissed the suit on merits. In such a situation, the learned Appellate Court instead of remanding the case to trial Court, ought to have decided the appeal itself on merits after appreciation of evidence.

Nowadays, it is generally seen that lower appellate Courts shirking from its own legal responsibility and adopting shortcut method remand the case to the trial Court for fresh decision.

It is needless to mention here that remand of case is not a healthy practice. In normal circumstances, Courts must avoid remand of case, considering the fact that the same puts a huge burden of expenses, reinvolvement of precious time and energy of the Court and the litigant. Therefore, sense of responsibility does not permit remand of a case, whereby, appellate Court/authority itself can delve the issue, without any extra pain or efforts only by going through the record which the trial Court could not adhere to, inasmuch as the appellate Court has much more wisdom and power than the trial Court to undo an illegality or irregularity committed by the lower Court.

In view of the discussion made above, the impugned order of the Appellate Court is set aside with a direction to it to decide the appeal itself on merits in accordance with law after hearing of both the sides.

Parties to appear before the trial court after due notice.

Disposed of.

September 02, 2019
anju

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No