

In the High Court of Punjab and Haryana at Chandigarh

RSA-5135 of 2019 (O&M)
Date of Decision:14.11.2019

Ram Kumar and others

---Appellants

vs.

Angrej Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Rakesh Gupta, Advocate
for the appellants

Rekha Mittal, J.

CM No. 14531-C of 2019

Counsel for the applicants would state that the application may be dismissed as not pressed.

Ordered accordingly.

Main case

Challenge in the present appeal has been directed against order dated 19.9.2019 whereby appeal against order dated 18.7.2017 passed by the Additional Civil Judge (Senior Division), Dabwali allowing application under Order VII Rule 11 of the Code of Civil Procedure (in short “the Code”) and rejecting the plaint, was allowed. The penultimate para of order impugned reads as follows:-

“Without commenting on the merits of the case and in the interest of justice proper opportunity was to be given to both

the parties to prove their stand, therefore, I find illegality, infirmity and irregularity in the impugned order dated 18.7.2017 passed by the learned trial court. Hence, the present Civil Misc. appeal filed by the plaintiffs-appellants is hereby allowed and the impugned order passed by the learned trial court is hereby set aside. The present case is remanded back to the learned trial court with the direction to decide the issues of res-judicata, cause of action and limitation on merits as per law.....”

A brief backdrop of the case is that respondents No. 1 and 2 (plaintiffs therein) filed suit for declaration with consequential relief of permanent injunction in respect of land, detailed in sub paras (a) to (q) in head note of the plaint. The appellants filed application under Order VII Rule 11 read with Section 151 of the Code for rejection of plaint on the premise that the suit is barred by principle of res judicata, law of limitation and no cause of action has arisen in favour of respondents-plaintiffs. The trial court, vide order dated 18.7.2017, allowed the application on the ground that suit is barred by principle of res judicata and the plaint is liable to be rejected on this score.

As has been noticed hereinbefore, the appeal preferred by the respondents-plaintiffs was allowed by the Appellate Court, order passed by the trial court was set aside and the matter was remanded to the trial court with the direction to decide issues of res judicata, cause of action and limitation on merits as per law.

Counsel for the appellants, in line, with averments raised in

application under Order VII Rule 11 of the Code (Annexure A6) would argue that in view of decision in the previous litigation pertaining to suit land, the instant suit is barred by principle of res judicata. It is argued that suit was decided in favour of appellants-defendants, legal heirs of Dhapa, vide judgment and decree dated 12.12.1983 by Sub Judge Ist Class, Dabwali and decree passed by the trial court was affirmed upto Hon'ble the Supreme Court, therefore, the trial court has rightly accepted plea of appellants with regard to the instant suit being barred by res judicata but the Court in Appeal committed a gross error by setting aside the order of trial court.

Another submission made by counsel is that in the application for rejection of plaint, the appellants also raised the issue of limitation and the plaint does not disclose cause of action but the Appellate Court did not advert to the said issues. In addition, it is argued that even if the Appellate Court was not convinced qua plea of res judicata, it should have remitted the case to the trial court for deciding the application afresh on the other two issues pertaining to suit being barred by law of limitation and there being no cause of action to file the suit.

I have heard counsel for appellants, perused the paper book particularly various annexures including the order impugned.

Be that as it may, it is undisputed position in law that an application for rejection of plaint is required to be decided on the basis of averments raised in the plaint and documents produced in support thereto. At this stage of the proceedings, the Court cannot examine the documents, if any, produced by the defendant(s) along with application for rejection of

plaint.

Counsel has failed to advance any convincing arguments, if question of res judicata in the given facts and circumstances can be decided on the basis of averments made in the plaint or documents relied upon by the plaintiffs. In this view of the matter, I find myself unable to be persuaded with the submissions made by counsel to assail the impugned order whereby the Appellate Court has set aside the order passed by the trial court rejecting the plaint on the question of res judicata, to be decided on the basis of evidence.

So far as plea of the appellants that the trial court has not decided the question of limitation and lack of cause of action, there is nothing on record suggestive of the fact that during the course of hearing the application for rejection of plaint, the appellants pressed the application on those counts as well. Indisputably, the appellants did not file any cross objections in appeal filed by the respondents to challenge order passed by the trial court. Counsel has failed to make out a case that before the first Appellate court, they raised an issue that the trial court failed to discharge its obligation to decide the question of limitation and non-disclosure of cause of action despite the appellants having pressed their application for rejection of plaint on those grounds as well. In this view of the matter, the second submission made by counsel is not meritorious and accordingly rejected.

In view of what has been discussed hereinbefore, finding no merit, the appeal is dismissed. However, nothing stated hereinbefore shall cause prejudice to the appellants to file an appropriate application before the

trial court for treating certain issues, if raised in the written statement, as preliminary issues. In case such an application is filed by the appellants, the same shall be decided by the trial court, in accordance with law.

(**Rekha Mittal**)
Judge

14.11.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No