IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1441-2020 (O&M)
Decided on : 13.10.2020

Ramesh Kumar Bansal

. . . Appellant(s)

Versus

Usha Rani and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Ms. Supriya Garg, Advocate
for the ppellant.

Mr. Ritesh Aggarwal, Advocate
for respondent Nos. 1 to 4.

Mr. Ashish Gupta, Advocate
for respondent Nos. 5 & 6.

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<u>MANJARI NEHRU KAUL, J.</u>

A Civil Suit bearing No. 185, dated 15th September, 2011, was instituted by Usha Rani, Asha Rani, Geeta Rani and Rano (respondents No.1 to 4 herein) daughters of late Karam Chand against respondent No.5 – Krishna Devi Wd/o of late Karam Chand and respondent No.6 - Pawan Kumar s/o late Karam Chand, Punjab National Bank and Anita Goyal w/o Jai Parkash Goyal, wherein, a claim of declaration of 1/6th share each in the property owned by late Karam Chand and a claim of possession by declaration, was made besides a challenge to the Mutation Nos.12545 and 13512 of village Kukar Majra. In the aforementioned suit, injunction was also claimed for restraining Krishna Devi (respondent No.5 herein) from alienating the property. The said suit was dismissed by the Addl. Civil Judge (Sr. Divn.), Amloh (in short 'ACJ') vide judgment and decree dated 25.05.2018. The dismissal of the aforementioned civil suit was challenged vide Civil Appeal No.66, dated 03.07.2018 by respondents No.1 to 4 before the learned Addl. District Judge, Fatehgarh Sahib (for brevity, 'ADJ'). The appeal so preferred by respondents No.1 to 4 was disposed off, on the basis of a compromise arrived at between the parties, vide judgment and decree dated 17^{th} January, 2020.

The applicant/appellant - Ramesh Kumar Bansal is aggrieved of the judgment and decree dated 17^{th} January, 2020, disposed off, on the basis of a compromise arrived at between the respondents herein. The grievance of the applicant-appellant is that even though he was a necessary party in the civil suit before the Court below, he was not impleaded as such and the appeal disposed off, on the basis of a compromise by concealment of material facts, misrepresentation and a fraud played upon the First Appellate Court.

It would be apposite to give in brief the case as pleaded by the applicant-appellant.

The applicant-appellant filed three civil suits i.e. Civil suit No. 59A and Civil Suit No. 60A, both filed on 26^{th} March, 2012 and Civil Suit No. 72 filed on 24^{th} April, 2012 before the ACJ, Amloh. In all these three Civil Suits, the following were impleaded as defendants.

i. M/s Krishna Agricultural Steel Works, Mandi Gobindgarh.
ii. Pawan Kumar S/o late Karam Chand (respondent No.6 herein)
iii. Krishna Devi Wd/o late Karam Chand (respondent No.5 herein).
iv. Vimal Kumar & Deepak Kumar Ss/o of Pawan Kumar.
All partners in M/s Krishna Agricultural Steel Works, Mandi Gobindgarh.

v. M/s Pawan Engineering Works, Mandi Gobindgarh through Krishna Devi (respondent No.5 herein), Usha Rani, Asha Rani, Geeta Rani and Rano (respondents No.1 to 4 herein) daughters of late Karam Chand.

In the aforementioned three Civil Suits bearing Nos. 59A, 60A and 72, recovery of an amount of Rs. 2,20,06,557/-, Rs. 74,20,938/- and Rs. 1,06,00,000/-, respectively, was sought along with *pendente lite* and future interest. A relief of injunction restraining the defendants from alienating the assets of M/s Krishna Agricultural Steel Works, Mandi Gobindgarh and the shares of M/s Pawan Engineering Works in the property situated at village Kukar Majra, Tehsil Amloh, District Fatehgarh Sahib, was also sought. These civil suits were duly contested by all the defendants. Vide separate judgments and decrees all dated 30th March, 2018, the trial Court disposed off the civil suits by decreeing for the recovery of Rs.2,00,00,000/-, Rs.50,00,000/- and Rs.90,00,000/- with proportionate costs and *pendente lite* as well as future interest. Besides this, a second charge was created by the Court on the properties belonging to M/s Krishna Agricultural Steels Works and M/s Pawan Engineering Works, Mandi Gobindgarh, in favour of the applicant-appellant. All the three aforementioned civil suits were, however, dismissed against Usha Rani, Asha Rani, Geeta Rani and Rano (respondents No.1 to 4 herein).

It has been argued by the learned counsel for the applicant-appellant that as the respondents visualized that the money suits could be filed against M/s Krishna Agricultural Steels Works and M/s Pawan Engineering Works and their partners and which in all probability could be decreed, respondents No.1 to 4 i.e. Usha Rani, Asha Rani, Geeta Rani and

Rano daughters of late Karam Chand with an oblique motive, filed the Civil Suit No. 185 on 15.09.2011, against Krishna Devi (respondent No.5 herein) Wd/o late Karam Chand, Pawan Kumar (respondent No.6 herein) S/o late Karam Chand, Punjab National Bank and one Anita Goyal as a pre-emptive measure. He further contended that all the aforementioned three money decrees were passed in his favour on 30th March, 2018, whereas, the Civil Suit No.185, filed by respondents No.1 to 4 against respondents No.5 & 6, claiming property was dismissed on 25th May, 2018. It was urged that none of the respondents ever brought this fact to the notice of the first Appellate Court nor disclosed that the money decrees dated 30th March, 2018, had been passed against M/s Krishna Agricultural Steels Works and M/s Pawan Engineering Works, Mandi Gobindgarh, in which respondents No.5 & 6 i.e. Krishna Devi and Pawan Kumar, respectively, were partners and that the trial Court had created a second charge/lien on the properties of both these firms in favour of the applicant-appellant, which were the subject matter of the three money decrees dated 30th March, 2018. Hence, it was submitted that the respondents intentionally did not implead the applicant-appellant as a party either in the first appeal nor made him a party in the compromise, stated to have been effected between the parties on 09.08.2018, being fully aware that the second charge already stood created in favour of the applicant-appellant vide the three judgments and decrees dated 30th March, 2018. It was argued by the learned counsel for the applicant-appellant that it was thus clearly discernible that the judgment and decree under appeal dated 17th January, 2020, had been obtained by concealment and suppression of material facts to avoid the execution of the aforementioned three money decrees, which had attained finality as well, since no appeal had been preferred against them.

Per contra, learned counsel Mr. Ritesh Aggarwal, Advocate, appearing for respondents No.1 to 4 and Mr. Ashish Gupta, Advocate, appearing for respondents No.5 & 6, have at the very outset questioned the *locus standi* of the applicant to file the instant appeal as well as its maintainability. It has been contended by the learned counsel that no appeal would lie in the instant case, as the impugned judgment and decree, being a compromise decree was not appealable in view of the bar created by Section 96(3) of the Civil Procedure Code (in short, 'CPC'). Reliance was placed by the learned counsel on **Harmandeep Singh Vs. Swaran Singh and Others, 2010(1) RCR(C) 443**, wherein, a coordinate Bench of this Court held that as per the provisions contained in the Punjab and Haryana High Court Rules and Orders (Volume 5, Chapter 1, Part C, Rule 2), a decree passed on the basis of a compromise between the parties, was not appealable and hence, the applicant-appellant could not be permitted to file an appeal, much less, be impleaded as a party. It was further argued that the applicant-appellant had filed the instant appeal on false and fictitious grounds and procured the interim order dated 29th June, 2020, wherein, alienation of the property in question was stayed, by misleading and concealing material facts from this Court. It was submitted that the applicant-appellant had, in fact, moved an application under Order 1 Rule 10 of CPC for impleading him as a party in Civil Suit No. 185 of 2011, which was rightly dismissed by the trial Court on 20th December, 2016, by observing that the applicant-appellant had no concern with the suit property and as such, he was not entitled to any relief. Hence, it was urged that the applicant-appellant could not now turn around and plead that he being a necessary party should have been impleaded before the Court below. The learned counsel submitted that the provisions of Order 23 Rule 3 of CPC were applicable only to the parties to the suit and the applicant being a stranger to the *lis* between the respondents, had thus no *locus* to challenge the compromise decree. In support of their submissions, the learned counsel placed reliance upon **Triloki Nath Singh Vs. Anirudh Singh (D) Through Lrs & Ors., 2020(2) RCR(C) 661**. It was also submitted by the learned counsel that since the applicant had played a fraud and misled this Court at the time of preliminary hearing, on this ground itself, the instant appeal deserved to be dismissed. In support, reliance was placed upon **Neena Sehrawat Vs. Union of India and Others, 2013(2) SCT 706**.

I have heard learned counsel for the parties at length and perused the material on record.

With the consent of the learned counsel for the parties, this Court now proceeds to decide the main appeal along with the miscellaneous applications filed by the parties.

No doubt, the applicant-appellant Ramesh Kumar Bansal was not a party to the proceedings, which culminated in the impugned judgment and decree dated 17th January, 2020, however, his case is covered by the provisions of Volume 5, Chapter I, Part C, Rule 2 of the Rules and Orders of the Punjab and Haryana High Court, which are reproduced as under:-

"2. Whenever by a decree or order which appealable to the High Court the interest of-

(a) a beneficiary in property which at the date of such decree or order was vested in or in the possession of a trustee, an executor, an administrator, or a receiver or

manager appointed by a court who as such was a party to such decree or order; or

(b) a legal representative as such of a deceased party to such decree or order; or

(c) an assignee of a party to such decree or order by assignment subsequent to the date of such decree or order; or

(d) a person whose interest arose after the date of such decree or order by reason of any creation or devolution of interest, by, through, or from any party to such decree or order is affected;

and such beneficiary, legal representative, assignee, or person was not or has not been made a party to such decree or order or to proceedings thereunder or thereon and desires to present to the High Court for admission a memorandum of appeal from such decree or order, he may name himself therein as an appellant if at the time when he presents such memorandum of appeal for admission he along with such memorandum of appeal presents an application for leave to make himself an appellant, and, except as hereinafter provided, an affidavit stating such facts as may be necessary in support of his application : Provided always, that a Judge of the High Court may, by an order allow in his discretion a reasonable time in that behalf for the presentation of such an affidavit, if it appears to him that the applicant could not by the exercise of due diligence have procured such affidavit in *time for presentation along with the memorandum of appeal."*

It would be worthwhile to notice that the applicant-appellant Ramesh Kumar Bansal did exercise due diligence, as he filed an application before the trial Court under Order 1 Rule 10 of CPC for being impleaded as a party in Civil Suit No.185 of 2011, which application was dismissed on 20.12.2016. Till that point in time, no legal right had accrued in favour of the applicant-appellant. It was only subsequently when his three money suits were allowed on 30th March, 2018, the rights of the applicant-appellant crystallized in his favour. Under the circumstances, in the considered opinion of this Court, the applicant-appellant Ramesh Kumar Bansal is entitled to file the present appeal in terms of the relevant provisions of the High Court Rules and Orders, as reproduced hereinabove. The applicant-appellant is a party adversely affected by the impugned judgment and decree dated 17th January, 2020, which decree was evidently obtained to defeat and frustrate the rights of the applicant-appellant in execution proceedings in respect of the three money decrees dated 30th March, 2018.

There can be no doubt that an appeal can be preferred by any party, if the decree impugned, adversely affects its rights. For the purpose of finding out, if the party is adversely affected, a Court can go behind the decree and see whether the adjudication adversely affects the party filing such an appeal, which of course, would have to be determined according to the peculiar circumstances of each individual case.

In view of the above, this Court deems it appropriate to implead the applicant - Ramesh Kumar Bansal as an appellant to the present proceedings and he is permitted to file an appeal.

The appellant has raised the following questions of substantial law:-

> *"i. Whether the impugned judgment and decree 17.01.2020 is liable to be set aside as the same has got passed by the respondents in their favour with the concealment of facts from the court ?*
>
> *ii. Whether the impugned judgment and decree dated 17.01.2020 is sustainable in the eyes of law as the judgment and decree dated 30.03.2018 passed in CS No. 72 of 24.04.2012, 30.03.2018 in CS No. 60 of 26.03.2012 and 30.03.2018 passed in CS No. 59 of 26.03.2012 is already passed in favour of the appellant ?"*

It cannot be disputed that the judgment & decree dated 17th January, 2020, under appeal, saw the light of the day after the money decrees had been passed against respondents No.5 & 6 vide judgment & decrees dated 30th March, 2018. Further, the suit of respondents No.1 to 4, claiming share in the properties of late Karam Chand against their mother Krishna Devi and brother Pawan Kumar i.e. respondents No.5 & 6, was dismissed only on 25th May, 2018, i.e. after the passing of the money decrees.

The reliance placed by the learned counsel for the respondents on the provisions of Order 23 Rule 3 of CPC, would not be applicable to the facts and circumstances of the instant case, as it is not hard to discern that all the respondents in connivance with each other, have colluded with each other to evade the execution of the three money decrees dated 30th March, 2018, by way of a collusive compromise decree dated 17th January, 2020. In the facts and circumstances of the case as well as the material on record, this Court has no hesitation to hold that the rights of the appellant Ramesh Kumar Bansal are also involved in the suit property and therefore, he is competent to maintain an appeal.

Coming to the contention of the learned counsel for the respondents that the appellant had misled and concealed material facts from this Court with respect to the dismissal of an application under Order 1 Rule 10 of CPC, moved by him before the trial Court in civil suit No. 185 of 2011, deserves to be discarded, as admittedly, at that point in time, no money decree had been passed in favour of the appellant against respondents No.5 & 6, their respective firms and more particularly, the second charge/lien was created upon the properties of both the firms of respondents No.5 & 6 subsequent to the three judgments and decrees dated 30th March, 2018, passed in favour of the appellant.

It would be useful to place reliance upon **Hardevender Singh Vs. Paramjit Singh, 2013 AIR SC (C) 856**, wherein, the Hon'ble Supreme Court, held as under:-

> *"13. Presently, it is apt to note that Sections 96 and 100 of the Code make provisions for preferring an appeal from any original appeal or from a decree in an appeal respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal. If a judgment and decree prejudicially affects a person, needless to emphasize, he can prefer an appeal. In this context, a passage from Smt.* ***Jatan Kanwar Golcha v. M/s.***

Golcha Properties Private Ltd., AIR 1971 SC 374. *is worth noting :-*

> *"It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate Court and such leave should be granted if he would be prejudicially affected by the judgment."*

*14. In **State of Punjab v. Amar Singh and another, AIR 1974 SC 994.** Sarkaria, J., while dealing with the maintainability of an appeal by a person who is not a party to a decree or order, has stated thus: -*

> *"84. Firstly there is a catena of authorities which, following the doctrine of Lindley, L.J., in **re Securities Insurance Co., (1894)2 Ch 410** have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it. As a rule, leave to appeal will not be refused to a person who might have been made ex nominee a party - see Province of **Bombay v. W.I. Automobile Association, AIR 1949 Bombay 141; Heera Singh v. Veerka, AIR 1958 Rajasthan 181** and **Shivaraya v. Siddamma, AIR 1963 Mysore 127; Executive Officer v. Raghavan Pillai, AIR 1961 Kerala 114. In re B, an Infant (1958) QB 12; Govinda Menon v. Madhavan Nair, AIR 1964 Kerala 235."***

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20. Though the High Court has referred to the said pronouncement, yet it has not applied the ratio correctly to the facts. This Court has clearly stated that if a person is prejudicially or adversely affected by the decree, he can maintain an appeal. In the present case, as we find, the plaintiff claiming to be a co-sharer filed the suit and challenged the will. The defendant No. 5, the brother of the plaintiff, supported his case. In an appeal at the instance of the defendant Nos. 1 to 4, the judgment and decree was overturned. The plaintiff entered into a settlement with the contesting defendants who had preferred the appeal. Such a decree, we are disposed to think, prejudicially affects the defendant No. 5 and, therefore, he could have preferred an appeal. It is worthy to note that the grievance pertained to the nature and character of the property and the trial court had decreed the suit. He stood benefited by such a decree. The same having been unsettled, the benefit accrued in his favour became extinct. It needs no special emphasis to state that he had suffered a legal injury by virtue of the over turning of the decree. His legal right has been affected. In this context, we may refer to a recent pronouncement in ***Ayaaubkhan Noorkhan Pathan v. The State of Maharashtra and ors., 2012(11) SCALE 39,*** *wherein this Court has held thus :-*

> *"A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression,*

*"person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized. (Vide: **Shanti Kumar R. Chanji v. Home Insurance Co. of New York, AIR 1974 SC 1719;** and **State of Rajasthan & Ors. v. Union of India & ors., AIR 1977 SC 1361)."**”*

As a sequel to the above, the instant appeal is accepted and the impugned judgment and decree dated 17th January, 2020, is set aside. The case is remanded back before the First Appellate Court, to decide Civil Appeal No. 66, on merits after giving an opportunity of hearing to all the parties concerned including the appellant Ramesh Kumar Bansal to contest the civil appeal. The First Appellate Court shall endeavour to decide the appeal preferably within six months of this order.

In view of the disposal of the present appeal, all civil miscellaneous applications also stand disposed off in terms of the above order.

(MANJARI NEHRU KAUL)
JUDGE

October 13, 2020
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No