

**Sr. No.250
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.4490 of 2016 (O&M)

Date of Decision: 20.02.2020

Jaggi (now deceased) through his legal heirs and another
... Appellants

Versus

Poonam and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Shiv Kumar, Advocate,
for the appellants.

Mr. Ram Bilas Gupta, Advocate,
for respondents No.2 to 4.

ARUN MONGA, J.(ORAL)

1. Having suffered judgments and decree by the two Courts below plaintiffs are in second appeal before this Court to challenge the dismissal of his suit for permanent injunction against the defendants. The trial Court believed the case set up by the defendants and dismissed the suit. The First Appellate Court too upheld the findings rendered by the trial Court.

2. Briefly stated the facts as noticed by the Courts below are that suit had been filed by the plaintiffs on the averments that they are co-owners/co-sharers in possession of agricultural land measuring 114 kanals 15 marlas, detailed in para No.1 of the plaint. Earlier Smt. Lajwanti was the owner and in possession. She relinquished all her rights, title and interest qua her share in the suit land in favour of plaintiff No.1. Similarly Shri Ghan Shyam and Smt. Keshwati were also co-owners and co-sharers with the

plaintiffs but they also relinquished their rights of ownership and possession in favour of defendant No.1. Defendant No.1 sold her share of the suit property to defendants No.2 to 4. It is further averred that suit property has not been partitioned till date and every co-sharer has possession over the suit property according to khanakasht. The plaintiffs are in possession of Killa No. 23/2/1 (o-7) of Rect. No.31 and Killa no.9 (7-12), 12 (6-11), 21/2 (4-0) of Rect. No.44. Ghanshyam and Keshwati who were earlier in possession of Killa No.2/3 (3-6), 23/1 (4-8) of Rect. No.45 and had handed over the possession to defendant No.1, who in turn handed over the possession to defendants No.2 to 4. However, the defendants were bent upon to dispossess the plaintiffs from their possession and want to sell the suit property by way of plotting as well as construction and want to change the nature of the suit property without partition.

3. Respondents filed written statement and controverted the averments taken by the appellants-plaintiffs.

4. Based on the rival pleadings, the trial Court framed the following issues:-

- 1. Whether the plaintiffs have been in the possession of the suit property, as detailed in the para No.1 of the plaint? OPP*
- 2. Whether the defendants are liable to be restrained from interfering in the possession of the plaintiffs over the suit property, as detailed in para No.1 and 3 of the plaint by raising construction etc. thereof? OPP*
- 3. Whether suit is not maintainable in the present*

form?OPD

4. Whether the plaintiffs have no locus standi/cause of action to file the present suit?OPD

5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD

6. Whether the suit is false and frivolous and the same is liable to be dismissed with special costs?OPD

7. Whether the suit is bad for want of advalorem Court fee? OPD

5. Issues No.1 and 2 being inter-linked, were taken up together for adjudication and decided by the trial Court against the plaintiff.

6. Onus to prove issues No.3 and 4 was upon defendants. Trial Court found that suit of the plaintiffs was not maintainable and plaintiffs had no cause of action and locus standi to file the suit. Hence, both these issues were decided in favour of the defendants and against the plaintiff.

7. As regards issue No.5 and 7, the defendants did not press these issues. These issues were decided against them and in favour of the plaintiff.

8. The First Appellate Court agreed with the findings rendered by the trial Court and upheld the judgment and decree passed pursuant thereto by the trial Court.

9. I have heard the learned counsel and have perused the record and judgments and decrees of both the Courts below.

10. Learned counsel for the appellants has pointed out inter alia that the appellants had moved application dated 15.03.2014 before the learned First Appellate Court for permission to adduce

additional evidence; a reply thereto had been also filed by the defendants/respondents but without disposing of the said application, the learned First Appellate Court dismissed the appeal. This factual position is not disputed by the learned counsel for the respondents.

11. I find force in the contention of learned counsel for the appellants that it was necessary for the learned First Appellate Court to dispose of the said application before deciding the appeal, as its outcome could affect the result of the appeal itself.

12. In my opinion the appellate order liable to set aside with a direction to the learned First Appellate Court to pass fresh orders after deciding the application under Order 41 Rule 27 which was filed during pendency of the appeal and was also duly responded to by way of reply filed by the defendants and yet the same was not adjudicated upon.

13. Reliance is placed on a judgment of Hon'ble the Supreme Court of India in case titled as ***Malayalam Plantations Ltd. Vs. State of Kerala and another*** reported as ***2011 AIR (SC)559*** wherein it has been held that it is incumbent on the Appellate Court to pass formal orders in the event of a party chooses to file an application under Order 41 Rule 27 for adducing additional evidence. That being so, the judgment and decree passed by the First Appellate Court without adjudicated upon the application is not sustainable.

14. Accordingly, without expressing any opinion on the merits of this regular second appeal, the impugned appellate

judgment and decree are set aside. Matter is remanded back to the First Appellate Court to pass orders on application under Order 41 Rule 27 and thereafter decide the appeal afresh in accordance with law.

15. During pendency, status quo qua possession of the property shall be maintained by the parties.

16. Regular Second Appeal is disposed of in the aforesaid terms.

20.02.2020
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No