

Sr. No.201

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA-1312-2018 (O&M)
Date of Decision:03.03.2020

MANGAL SINGH & ORS.

... Appellants

Versus

BALDEV SINGH & ORS.

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr.Vijay Lath, Advocate
for the appellants.

Mr.Amrik Singh, Advocate
for the respondents.

ARUN MONGA, J.(ORAL)

Based on the rival pleadings, the trial Court had inter-alia framed issues interse the parties, wherein issue no.1 was in following terms:

“Whether plaintiffs are owner of the suit property? OPP”

On the evidence adduced before it and appreciation thereof, the trial Court returned finding qua the aforesaid issues in favour of plaintiffs/appellants. However, in the first appeal preferred by the defendants/respondents herein the said finding though dealt with but no specific finding was returned qua the ownership. The discussion by the First Appellate Court was confined only qua the possession. Aggrieved against the reversal of findings of the trial Court by the First Appellate Court, the plaintiff filed the Second Appeal where he has taken the following specific grounds. The relevant whereof is extracted herein below:

“The First Appellate Court in its findings has not given any finding on issue No.1, whether the appellants-plaintiffs are owners of the land comprised in Kharsa No.16/42/2 or n ot.

The finding of learned First Appellate Court which findings are of only one para i.e. Para No.15 are silent regarding the fact whether the appellants-plaintiffs are owners of the suit property or not.”

The Second Appeal preferred before this Court also inter-alia raised the following questions of law.

- I. Whether it is not incumbent upon the learned First Appellate Court whose judgment and decree is not final and is appealable to decide the lis before it on all the issues be raised by the parties?*
- II. Whether own admission of the respondents-defendants by producing Site Map (Ex-D-1) is not sufficient to hold that respondents-defendants are in possession of the disputed land?*
- III. Whether by taking the plea of adverse possession it cannot be inferred that respondents-defendants admit the ownership of appellants-plaintiffs over the land in dispute?*

Having heard the rival contentions of the learned counsel appearing for the parties herein, I am in agreement with the arguments of the learned counsel for the appellant that when an order to be passed by a Court is not final, and a further statutory appeal is provided, then it is incumbent upon the court below to return findings on all the issues raised by the parties. More so, in the hierarchy of the appellate jurisdiction, it becomes easier for the next appellate Court to appreciate the reasons and the findings returned by the Courts below. In the absence of any finding having been returned by the First Appellate Court on the question of ownership, the judgment under challenge before this Court is liable to set aside.

Reference may also be had to a judgment rendered by Hon'ble the Supreme Court of India in case titled as “Chandradhoja Sahoo v. State of Orissa & Ors.” reported as AIR 2013 Supreme Court 367 wherein it was held as below:

“We also deem it necessary to reiterate herein a fundamental principle of law that all courts whose orders are not final and appealable, should take notice of. All such courts should

decide the lis before it on all issues as may be raised by the parties though in its comprehension the same can be decided on a single or any given issue without going into the other questions raised or that may have arisen. Such a course of action is necessary to enable the next court in the hierarchy to bring the proceeding before it to a full and complete conclusion instead of causing a remand of the matter for a decision on the issue(s) that may have been left undetermined as has happened in the present case. The above may provide a small solution to the inevitable delays that occur in rendering the final verdict in a given case.”

In view of the aforesaid, the judgment and decree passed by First Appellate Court is set aside and the case is remanded for fresh decision in accordance with law by the First Appellate Court. It is made clear that it will be open to the First Appellate Court to deal with all the issues again, in case it so deems fit.

Disposed of accordingly.

03.03.2020

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(ARUN MONGA)
JUDGE

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