

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

SAO-3-2021 (O&M)
Date of decision: 26.08.2021

Raj Bala

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. S.K. Nehra, Advocate for the appellant.

H.S. MADAAN, J. (Oral)

Case taken up through video conferencing.

Plaintiff Raj Bala had filed a suit for declaration and permanent injunction against defendants State of Haryana through District Collector, Gurugram and others. Notice of that suit was given to defendants, who appeared and filed written statement. Vide order dated 01.12.2020, the said suit was decreed.

Feeling aggrieved, the defendants had preferred an appeal before learned District Judge, Gurugram. Such appeal was assigned to Addl. District Judge, Gurugram, who vide order dated 03.02.2021, accepted the same, setting aside the judgment and decree passed by the trial Court, issuing directions to the trial Court to decide the suit afresh as per law after recording issue-wise findings.

The plaintiff felt aggrieved by such decision given by

learned Addl. District Judge, Gurugram and has approached this Court by way of filing the present appeal.

I have heard learned counsel for the appellant besides going through the record and I find that the present appeal is doomed for failure.

Learned Addl. District Judge, Gurugram has primarily set aside the judgment and decree passed by the trial Court and remanded the case for the following reasons:-

- (i) the issues had not been framed properly by the trial Court;
- (ii) onus of some issues was wrongly placed;
- (iii) the suit has been decided by the trial Court merely on the basis of pleadings and not on the basis of evidence, in the process dispensing with requirement of trial;
- (iv) neither any oral evidence was led by either party nor any document was marked or exhibited before the Court, rather, the trial Court itself recorded an observation after framing of issues that there was no need of trial or recording evidence as the defendants instead of contesting had admitted the claim of the plaintiff.

The first Appellate Court had observed that it was having 03 options which were as under:-

- (I) Deciding the appeal finally on merits under Order 41 Rule 24 CPC upon considering the evidence whatever is available with the parties in the instant appeal itself.
- (II) Remanding the proceedings back to learned trial Court under Order 41 Rule 23 A CPC by way of reversing all

the findings.

(III) Instead of remanding the whole case to the learned trial Court, seeking a report from the learned trial Court on specific issues under Order 41 Rule 25 CPC which have not been framed and deciding appeal subsequently after receiving such a report.

The first option of deciding the appeal on merits was not resorted to for the reason that it was not possible for that Court to do so as there was no oral or documentary evidence available on record of lower Court and if evidence is recorded by first Appellate Court, then it would start a denovo trial. While coming to this conclusion, judgment of Apex Court was taken into view.

With regard to feasibility of adopting second and third option, again relying upon Apex Court judgments, such options were ruled out and then first Appellate Court reached an inference that it was an exceptional case where neither issues had been properly framed nor the evidence had been recorded by the trial Court; the relief of permanent injunction claimed by the plaintiff had not even been considered by the trial Court, since no particular issue in that regard had been framed; the relief of mandatory injunction had been granted by the trial Court to plaintiff despite that such relief was not claimed by the plaintiff in the plaint; that some of the objections pertaining to legal issues had also not been dealt with since no issue was framed in that regard; that onus to prove issues No.1 and 2 was kept on plaintiff; no oral or documentary evidence was lead by the plaintiff to discharge

that onus and no opportunity was given to the plaintiff to do so; that documents relied upon by the plaintiff were neither marked nor exhibited; minutely analyzing the judgment and decree passed by the trial Court, the first Appellate Court framed additional issues and then remanded the case. The grouse of plaintiff against that judgment passed by Addl. District Judge, Gurugram is without any justifiable reason. The judgment passed by Addl. District Judge, Gurugram is quite detailed, well reasoned and does not suffer from any illegality, infirmity much less the same being arbitrary or having been passed in violation of settled principles. It is result of correct interpretation of law. No interference therewith is called for by this Court while sitting in appeal. Therefore, the instant appeal stands dismissed.

26.08.2021

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(H.S. MADAAN)
JUDGE

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