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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1804-2022 (O&M)

Date of Decision:01.08.2022

Dharam Singh and others

.. Petitioners

Vs.

Rupinder Kaur

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Pawan Attri, Advocate for the petitioner.

Mr. S.S. Momi, Advocate for the respondent.

...

Manoj Bajaj, J. (Oral)

Petitioners (defendants) have filed this revision petition by invoking Article 227 Constitution of India to challenge the order dated 18.04.2022 (Annexure P-7) passed by Addl. District Judge, Kurukshetra in Civil Misc. Appeal No.50/2020, whereby the appeal filed by the plaintiff (respondent) against the order dated 19.08.2020, dismissing her application under Order XXXIX Rules 1 and 2 CPC, was disposed of.

Briefly, the facts of this case are that respondent/plaintiff filed a suit for permanent injunction in respect of the suit property mentioned in para 1 of plaint (Annexure P-1), claiming herself to be co-owner with the defendants and in cultivating possession on the basis of sale deed dated 11.05.2018 and 30.10.2018 and judgment and decree dated 16.09.2019. As per pleadings, the plaintiff is not being allowed to use the tube-well installed at the suit land and on this cause of action, she prayed for a decree

of injunction against defendants. Further along with suit, an application under Order XXXIX Rules 1 and 2 CPC was also filed by the plaintiff.

Upon notice, the defendants/petitioners contested the suit by filing respective replies to the plaint as well as to the miscellaneous application and raised various preliminary objections regarding locus standi, maintainability of the suit and cause of action etc. and apart from it, on merits also, it was pleaded that the tube-well belongs to the owners of the suit property and defendants and plaintiff are co-sharers, therefore, she cannot seek injunction. According to the defendants, the suit has been filed only to harass them at the instance of husband of the plaintiff.

Considering the pleadings of the parties and material on record, the trial Court vide order dated 19.08.2020 decided the application and directed the petitioners/defendants to permit the applicant to use the tube-well on first two days of every week i.e. Monday and Tuesday and she was also directed to pay 1/4th share in the electricity charges of tube-well in first week of every month, along with the maintenance charges in proportion to her share.

Aggrieved against this order, plaintiff preferred appeal before Addl. District Judge, Kurukshetra and the appellate Court vide order dated 18.04.2022 proceeded to dispose of the appeal without either setting aside the order dated 9.08.2020 or specifically remanding case before the trial Court. Hence this revision petition.

Learned counsel for the petitioners has argued that the appellate Court has erroneously disposed of the appeal without touching the merits and correctness of the order under appeal by directing the plaintiff to specify before trial Court her share in the joint holding (suit property) along

with details of the passage to seek the relief of injunction, and further directed that this exercise shall be done within 20 days from the date of the order. It was also ordered by Appellate Court that the trial Court would re-adjudicate the prayer for interim injunction.

Notice of motion.

At this stage, Mr. S.S. Momi, Advocate appears on behalf of the plaintiff and submits that the Appellate Court had heard both the sides and disposed of the appeal by directing the plaintiff to introduce clarity in her pleadings and pursuant to the said direction, the plaintiff applied for amendment of the plaint by moving an application under Order VI Rule 17 CPC and the same stands allowed vide order dated 06.05.2022. Learned counsel has produced the copy of the said order during the course of hearing and the same is taken on record. Learned counsel has argued that since the direction given by the appellate Court is already complied with, therefore, no interference is called for by exercise of revisional jurisdiction.

After hearing the learned counsel for the parties and considering the above background, this Court finds that the appellate Court has exceeded its jurisdiction in disposing of the appeal by making following observations:

“In the given facts and circumstances, at this stage and in the interest of justice, this Court deems appropriate to direct the appellant/plaintiff to specify before the learned trial Court, her share in the entire joint holding-cum-suit property and to specify the details of the passage (as referred above) by way of an affidavit or by way of amendment of the pleadings and thereafter, to seek the relief of injunction before the learned trial Court; and the needful to that effect be done within 20 days from today. Thereafter, hearing both the parties, the learned trial Court shall re-adjudicate/reconsider the prayer of interim injunction of the appellant/plaintiff expeditiously and till the adjudication of the same, the arrangement qua the use of the tube-well in question, as has been ordered in the impugned order, shall continue.”

A perusal of the above shows that the appellate Court has not at all considered the merits of the impugned order passed by the trial Court and issued directions to the plaintiff to seek amendment of the plaint and further directed the trial Court to re-adjudicate the said application. It is settled law that the appellate Court while hearing the appeal is required to examine the grounds raised in the appeal to test the correctness of the impugned order, but it is not supposed to travel beyond the pleadings to advise the party before it, to seek amendment of the pleadings. In the given facts, the appellate Court has apparently exceeded its jurisdiction, as it has neither upheld the order nor set aside the same, whereas a perusal of the order dated 19.08.2020 passed by the trial Court shows that the entire material relied upon by the parties was considered while deciding the plaintiff's application under Order XXXIX Rules 1 and 2 CPC.

No doubt, pursuant to the order dated 18.04.2022 passed by the appellate Court, the plaintiff had moved an application under Order VI Rule 17 CPC for amendment of the plaint and the same has been allowed on 06.05.2022, but the said order shows that the application was moved on 06.05.2022 and the same was accepted instantly, without even issuing notice to the defendants or affording them opportunity to contest the same. Thus, this order also suffers from grave illegality and is not sustainable.

Resultantly, while exercising the revisional jurisdiction, the impugned order dated 18.04.2022 (Annexure P-7) passed by the appellate Court as well as the order dated 06.05.2022 passed by trial Court are set aside and the case is remanded back before the appellate Court to decide it afresh after hearing the parties.

The parties are directed to appear before the trial Court on
10.08.2022.

01.08.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No