

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

SAO-19-2015 (O&M)

Date of decision : 14.12.2022

Harbir Singh

... Appellant(s)

Versus

Rajender

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.R. Hooda, Advocate for the appellant.

Ms. Puja Chopra, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

The present appeal has been preferred against the order dated 14.01.2015 vide which the judgment and decree passed by the Trial Court has been reversed by the lower Appellate Court without reversing or even advertent to any of the findings recorded by the Trial Court.

The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for declaration with consequential relief of permanent injunction declaring the Will dated 14.06.2007 as illegal, null and void and that the defendant-appellant be restrained from interfering in the peaceful possession of the plaintiff-respondent over the suit land or from alienating the same in any manner. Vide judgment and decree dated 23.08.2012 the suit was dismissed by the Trial Court. Aggrieved by the said judgment and decree, an appeal was preferred by the plaintiff-respondent which has been

remanded only on the ground that the suit was bad for non-joinder of necessary parties. It is apt to note that a specific issue qua this was framed by the Trial Court which reads as under :

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

The finding on issue No.5 by the Trial Court was that the onus of the said issue was upon the defendant-appellant, however, no evidence either oral or documentary was led qua the said issue and hence the same was decided against the defendant-appellant.

Learned counsel for the defendant-appellant would contend that the lower Appellate Court ought to have decided the appeal on merits and not remanded the same on the ground of non-joinder of necessary parties especially in view of the findings on issue No.5.

Per contra, learned counsel for the plaintiff-respondent has contended that the case has correctly been remanded by the lower Appellate Court.

Heard.

In the present case, a specific issue No.5 was framed qua non-joinder and mis-joinder of the parties. The onus to prove the said issue was on the defendant-appellant. The defendant-appellant failed to lead any evidence either oral or documentary qua the said issue. In view thereof, the said issue was decided against the defendant-appellant. The lower Appellate Court, in a very casual manner, has remanded the case back only on the ground of non-joinder of parties without any discussion. The impugned order is vague and non-speaking and cannot be sustained in law.

In view of the above, the impugned order is set aside. The case is remanded to the lower Appellate Court to decide the appeal on merits in accordance with law.

Disposed off accordingly. Pending applications, if any, also stand disposed off.

14.12.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO