

**102 IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

RFA No. 472 of 1978 (O&M)

Date of Decision: 15.02.2023

PremVati Bhandari (Deceased) through her legal heirs

.....Appellant(s)

Versus

VedParkash and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. ManujNagrath, Advocate,
for the appellant(s).

Mr. AbhishekKhullar, Advocate,
for respondent No.7.

MAHABIR SINGH SINDHU. J.

Present first appeal has been preferred by defendant No.2-Prem Wati Bhandari (since deceased) under Section 39 of the Punjab Courts Act, 1918 (for short “Punjab Act”) against the impugned judgment &decree dated 28.02.1978,whereby suit of respondent No.1-plaintiff {VedParkash (since deceased)} was decreed by the then learnedSenior Sub-Judge, Jullundur.

2. It transpires that respondent No.1-plaintiff filed a suit for declaration to the effect that he is sole owner in possession of House No. 264-R situated in Model Town, Jullundur,duly reflected in the head-note of plaint.However, present appellant opposed the same, being *bona-fide* purchaser with consideration of Rs.30,000/- on the basis of sale-deed dated 11.06.1973 executed by respondent No.2-defendant No.1 (Kamla Devi).

3. It would be noteworthy that at relevant point of time, there was a limit of pecuniary jurisdiction for the District Judge to entertain first

appeal(s) under Section 39(1)(a) of the Punjab Act and according to which an appeal from a decree or order of Subordinate Judge was maintainable where the value of original suit did not exceed Rs.5000/- (rupees five thousand).

4. As in the present case, value of the subject matter for the purposes of jurisdiction was assessed as Rs.30,000/- (rupees thirty thousand), hence, instead of preferring an appeal before learned District Judge, the appellant approached this Court by way of present first appeal in the year 1978.

5. It is matter of record that on 14.12.1990, this appeal was allowed and as a result thereof, the impugned judgment & decree were set-aside.

6. Aggrieved against the judgment & decree dated 14.12.1990 (*supra*), respondent No.1-plaintiff filed an *intra-Court* Appeal (LPA No. 258 of 1991), but the same was dismissed on 20.03.1991.

7. Thereafter, he approached Hon'ble Supreme Court vide Civil Appeal No. 3091 of 1991 and which was allowed on 31.10.2002, *inter-alia*, in the following manner:-

“That the Judgment and Order dated the 20th March, 1991 of the Division Bench of the High Court of Punjab and Haryana at Chandigarh in Letters Patent Appeal No. 258 of 1991 and the Judgment and Order dated the 14th December, 1990 of the Single Judge of the aforesaid High Court in Regular First Appeal No. 472 of 1978 be and are hereby set aside and the Regular First Appeal No. 472 of 1978 be and is hereby restored to the file of the aforesaid High Court and the same shall be heard and decided afresh by the said High Court.”

8. Unfortunately, the appeal is lingering on for about 45 years, despite the fact that suit was filed on 06.06.1974.

9. On 13.02.2023 when the matter was listed before this Bench, the following order was passed:-

“On request of learned counsel for the appellant, posted on 15.02.2023.

Be shown in the urgent list.

It is made clear that no further adjournment shall be granted to either of the parties.”

10. Today, learned counsel for the appellant was confronted with the maintainability of present appeal aftermath of the Punjab Act No.29 of 2006, whereby, the embargo of pecuniary jurisdiction for District Judge, noticed here-in-above, was removed and all pending appeals were transferred to the quarter concerned.

11. Faced with the above situation, learned counsel for the appellant candidly acknowledged that present appeal deserves to be sent to the Court of learned District Judge for its adjudication, in accordance with law.

12. In order to take care about the pendency of other similar appeal(s), it would be appropriate to re-capitulate the amended provisions of the Act of 2006, whereby Section 39 of the Punjab Act was amended and which read as under:-

“39 (1) Save as aforesaid, an appeal from a decree or order of a Civil Judge (Senior Division) and Civil Judge (Junior Division), shall lie to the District Judge, irrespective of the value of the original suit.

(2) Subject to the provisions of sub-section (3), an appeal to the Court of District Judge shall be heard by the District Judge or the Additional District Judge.

(3) An Additional District Judge shall hear only such appeals, as the High Court may, by general or special order direct, or as the District Judge of the District may entrust to him.

(4) All appeals from a decree or order of a Civil Judge (Senior Division) and Civil Judge (Junior Division) pending in the High Court, irrespective of the value of the original suit, shall be transferred to the District Judge exercising ordinary territorial jurisdiction.

(5) The High Court may, by notification, direct that appeals lying to the District Judge from all or any of the decrees or orders passed in any original suit by any Civil Judge (Senior Division) or Civil Judge (Junior Division), shall be preferred to such other Civil Judge (Senior Division) or Civil Judge (Junior Division), as may be specified in the notification, and the appeals shall thereupon, be preferred accordingly, and the Court of such other Civil Judge (Senior Division) and Civil Judge (Junior Division), shall be deemed to be a District Court for the purpose of the appeals so preferred.”

13. A bare perusal of the amended provisions extracted hereinabove, reveals, *inter-alia*, that “*All appeals from a decree or order of a Civil Judge (Senior Division) and Civil Judge (Junior Division) pending in the High Court, irrespective of the value of the original suit, shall be transferred to the District Judge exercising ordinary territorial jurisdiction.*”

14. Thus, in such a scenario, there is no hesitation to observe that w.e.f. 18.10.2006, by operation of law, present appeal ought to have been transferred to the learned District Judge, Jalandhar.

15. It seems that neither the Registry; nor learned counsel(s) for the parties or even the litigants (as ignorance of law is no excuse: *ignorantia juris non excusat*) realized about the amendment carried out in the year 2006; rather are waiting for adjudication of the present appeal, which as a matter of fact as well as law, deserves to be decided by learned District Judge.

16. In view of the above, this appeal is ordered to be transferred to learned District Judge, Jalandhar for early disposal in accordance with law.

17. Needless to say that Court concerned shall not be influenced with the observations made hereinabove on merits of the controversy in any manner.

18. The parties shall appear before learned District Judge or the Additional District Judge, to whom the matter is entrusted, on 17.04.2023 and complete record be transmitted to the quarter concerned, forthwith.

20. Registry is also directed to find out as to whether there is/are any other similar appeal(s) pending before this Court; and if that be so, the same be listed as per roster,without any further delay.

15.02.2023.
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No