

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-452-2018 (O&M)

Date of decision: 15.03.2023

Malkiat Singh

...Petitioner(s)

Vs.

Yadwinder Singh & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Parvinder Singh, Advocate for the petitioner.

Mr. Arnav Sood, Advocate for respondent No.1.

NIDHI GUPTA, J.

Present revision petition has been filed by the defendant No.1, seeking setting aside of order dated 7.12.2016 (Annexure P-5), whereby learned Lower Appellate Court in review of its own judgment and decree dated 03.10.2016 has set the same aside, and directed re-hearing of the appeal on merits.

2. Brief facts of the case are that respondent No.1/plaintiff filed a Suit for specific performance on the basis of agreement to sell dated 08.07.2009. Defendant No.1/petitioner denied the said agreement and averred that his blank signed papers for the purpose of loan had been manipulated. Respondent No.2/defendant No.2 also denied the agreement, in fact he pleaded that he is owner in possession of property in question on the basis of exchange deed dated 10.03.2011 executed by petitioner/defendant No.1. Said Suit was partly decreed by learned trial Court by ordering return of earnest money.

3. Aggrieved therefrom, the petitioner filed first appeal in the Court of learned District Judge, Shaheed Bhagat Singh Nagar. However, said appeal was incorrectly 'allowed' in favour of plaintiff/respondent No.1, and he was directed to deposit remaining sale consideration within two months from the date of passing the judgment and decree dated 03.10.2016.

4. Respondent/defendant No.2 filed a review application seeking review of abovesaid conditional judgment and decree dated 3.10.2016 in which, petitioner is stated to have not even been validly served. However, vide impugned order dated 07.12.2016, said review application has been allowed by learned Lower Appellate Court whereby judgment and decree dated 03.10.2016 has been set aside and it has been directed that the appeal be re-heard on merits.

5. Perusal of record shows that, learned First Appellate Court passed judgment and decree dated 03.10.2016 (Annexure P3) thereby allowing said appeal inadvertently in favour of plaintiff/respondent No.1; whereas the appeal had been filed by the petitioner. In review application, this error is admitted by learned First Appellate Court in Para 15 of the impugned order dated 7.12.2016 (Annexure P5) as follows:-

"15. Guided thus, this Court admits error on its part, which is apparent on the face of record as instead of dealing with the matter as an appeal brought by Malkiat Singh, this Court went on to deal with the matter as an appeal filed by Yadwinder Singh, which is an error apparent on the face of record and need be rectified exercising powers of review available under Section 114 CPC and Order XLVII Rule 1 CPC."

6. Accordingly, learned First Appellate Court vide impugned order (Annexure P5) dated 07.12.2016 directed as follows:-

“22. Guided thus, I have gone through the judgment rendered by this Court on 3.10.2016 to find that the error is apparent, on the face of it, need not be worked out with any further discussion. Appeal filed by defendant no.1 against alternate relief of recovery granted against him was dealt with as if it was an appeal filed by the plaintiff and instead of dismissing the suit against defendant no.1/appellant – as was the prayer made in appeal or instead of dismissing the appeal as was contended for the contesting respondent/plaintiff the suit was ordered to be decreed in toto which was not even asked for before this Court.

23. Consequently the judgment and consequent decree passed by this Court on 3.10.2016 are reviewed and are hereby set aside. The matter needs to be reheard on merits, afresh. The appeal is ordered to be restored at its original number and to quell all of the apprehensions of either party to this lis, the appeal is transferred to the Court of Shri Munish Singal, the Learned Additional District Judge, Shaheed Bhagat Singh Nagar, for 16.1.2017 requiring it to put Malkiat Singh to fresh notice of the appeal, he being the appellant, and then to decide the matter afresh.”

7. At this stage it is submitted by learned counsel for the petitioner that he has no objection if present revision petition is disposed of with a direction to the learned First Appellate Court to dispose of the appeal expeditiously with liberty to the petitioner to raise plea regarding conduct of respondent No.1/plaintiff.

8. Learned counsel for the respondent No.1 has no objection to this.

9. No other submission/argument is made by learned counsel for the parties.

10. Record shows that though service is recorded to be complete as far back as 05.04.2019, however, there is no representation on behalf of respondent No.2. Accordingly, present matter is being decided in his absence.

11. In view of the facts as canvassed hereinabove, the present Revision Petition is **disposed of** with a direction to the learned Additional District Judge, Shaheed Bhagat Singh Nagar at Nawanshahr to dispose of the regular Civil Appeal No.99 of 2015 expeditiously preferably within a period of six months from the date of receiving certified copy of this order. Petitioner is granted liberty as above said.

12. Pending application(s) if any also stand(s) disposed of.

15.03.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No