

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113

CM-1700-C-2023 &
CM-1702-C-2023 in/&
RSA-450-2023 (O&M)
Date of Decision :17.02.2023

Balraj and others

...Appellants

Versus

Nafe Singh (since deceased) through his LRs

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Vikram Singh Punia, Advocate for the appellants.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-1700-C-2023

Present application has been filed for placing on record

Annexure A-1 to A-3.

Application is allowed.

Annexures A-1 to A-3 are taken on record.

RSA-450-2023 (O&M)

In the present regular second appeal, the challenge is to order dated 23.01.2023 passed by the Lower Appellate Court by which, the appeal preferred by the appellants-defendants against the judgment and decree dated 29.10.2015 passed by the trial Court has been accepted with the following directions:-

“In view of the above facts and law, the learned lower Court has not correctly appreciated the entire facts on file, hence, impugned judgment and decree dated 29.10.2015 is not sustainable. There is merit in appeal and the same is hereby allowed and judgment and decree dated 29.10.2015 is hereby set-aside and the case is

remanded to the learned trial Court/successor court with the direction to frame specific issue on account of ancestral nature of the suit property and after affording an opportunity to lead evidence, decide the matter afresh, in accordance with law. Decree sheet be prepared accordingly. The parties are directed to appear before the learned court/successor court on 04.02.2023.”

Learned counsel for the appellants submits that though order of the trial Court dated 29.10.2015 has been set aside but the issue to be decided by the trial Court should have been framed by the Lower Appellate Court before remanding the case back, which act is missing in the impugned order dated 23.01.2023.

I have heard learned counsel for the appellant and have gone through the record with his able assistance.

The argument which has been raised by the learned counsel for the appellant that a specific issue should have been framed by the Lower Appellate Court before remanding the case back to the trial Court which has not been done in the present case is not borne out from the reading of para 14 of the impugned order dated 23.01.2023. In the impugned order, Lower Appellate Court clearly stated that the trial Court/successor Court will frame the specific issue to be decided qua the ancestral nature of the suit property and decide the said issue after affording due opportunity to the parties to lead their respective evidence. Once, a specific direction has been given, the grievance of the appellant that the said issue should have been framed by the Lower Appellate Court before remanding the case back cannot be accepted unless and until any prejudice being caused is shown to this Court. No prejudice has been shown to this Court qua the direction given in para-14 of the judgment dated 23.01.2023 hence, the argument being raised by the learned counsel for the appellants cannot be accepted.

Learned counsel for the appellants further submits that while passing the judgment and decree dated 23.01.2023, which is impugned in the present regular second appeal, Lower Appellate Court has allowed an application filed by the respondents-plaintiffs under Order 41 Rule 27 of the CPC by which documents were sought to be produced by way of an additional evidence but the said relief could not have been allowed especially, keeping in view the specific provision of Order 41 Rule 27 (i) (aa) of the CPC.

The said argument of the learned counsel for the appellants cannot be accepted for the reason that Lower Appellate Court came to the conclusion that there was no specific issue framed qua the determination of nature of property in question issue arose for consideration in the appeal filed by the present appellants. Once, the said question had come for consideration before the Lower Appellate Court and as the respondents-plaintiffs wanted to project the nature of the property before the Lower Appellate Court, application for leading additional evidence was filed, which was allowed by the Lower Appellate Court. The argument that the document sought to be produced by way of an additional evidence was to the knowledge of the parties concerned hence, could have been allowed, cannot be accepted for the reason that once, there was no issue framed by the trial Court qua the nature of the property in question, denying an opportunity to the party concerned to lead an evidence to prove the nature of property in the appeal, wherein said issue was raised, cannot be treated as arbitrary or without jurisdiction.

Further, once the case has already been remanded back with a direction to the trial Court to frame a specific issue which issue relates to

determination of the nature of the property in question with liberty to both the parties to lead their evidence, the grievance raised by the learned counsel for the appellants qua allowing the additional evidence has already been rendered infructuous as once an issue is framed by the trial Court, parties will lead their respective evidence qua the said issue hence, the arguments being raised by the learned counsel for the appellants in the present regular second appeal do not show any prejudice, which has been caused to the appellants in the facts and circumstances of the present case.

No other argument has been raised.

Present regular second appeal is accordingly dismissed.

CM-1702-C-2023

Application is also dismissed.

February 17, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No