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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-692-1995 (O&M)
Reserved on : 14.03.2023
Date of decision : 11.04.2023

Ambedkar Sudhar Sabha and Ors.Appellants

Versus

Faquir Chand (deceased) through LR and Ors.Respondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vinay Kumar Mahajan, Advocate for the appellants.

Mr. Ashok Giri, Advocate
for legal representative of respondent No.1.

Respondent Nos.2 to 6 proceeded
against *ex parte* vide order dated 20.08.2009.

ALKA SARIN, J.

The present appeal has been preferred by the plaintiff-appellants aggrieved by the judgment and decree dated 08.11.1994 passed by the First Appellate Court whereby the suit has only been partly decreed.

The brief facts relevant to the present *lis* are that the plaintiff-appellants filed a civil suit seeking a decree of permanent injunction restraining the defendant-respondents from interfering in the peaceful possession of the plaintiff-appellants regarding building of Harijan Dharamshala described in detail in the plaint. It was the case set up that the property in dispute was in possession of the Sabha and it was an old Harijan Dharamshala. The plaintiff-appellants had renovated the same and the site

adjoining the building was being used as a park by the plaintiff-appellants for congregation and holding meetings and other functions of the Harijan community of the village. It was further averred that the plaintiff-appellants intended to construct a library in the premises, however, the defendant-respondents were threatening to use the property in dispute for their private purposes. The defendant-respondent No.1 contested the suit and denied all allegations. He pleaded that he was the owner in possession of the property in dispute and that earlier he had filed a suit for permanent injunction against Ujjagar Singh and others which was decreed on 09.04.1977 and he was held to be owner in possession of the property in dispute. Defendant-respondent No.1 further pleaded that the Dharamshala of Harijans had been constructed by the Welfare Department of the Punjab Government and denied that the same had been constructed and renovated by the plaintiff-appellants. It was further averred that the plaintiff-appellants had no right to construct the building on the property in dispute which was owned by the Gram Panchayat and that part of the property in dispute was owned by the Gram Panchayat and partly by the defendant-respondent No.1. The defendant-respondent Nos.2 to 5 also contested the suit and they also took the stand that a portion of the property in dispute was under the Harijan Dharamshala managed by the Gram Panchayat of Village Dhamauli. Apart from the suit property, vacant land was in possession of defendant-respondent No.1. In replication, pleadings in the plaint were reiterated.

On the basis of the pleadings, the following issues were framed by the Trial Court :

1. Whether the plaintiff Sabha is a registered under the Registration of Societies Act ? OPP

2. Whether Bhag Singh is duly authorized to file the suit ? OPP
3. Whether the property in dispute is in possession of the plaintiff and is being managed by them ? OPP
4. Whether the plaintiffs have no cause of action to file the suit ? OPD
5. Whether the suit is liable to be stayed ? OPD
6. Whether the property in dispute belongs to Gram Panchayat ? OPD
7. Whether the suit is bad for non-joinder of necessary parties ? OPD
8. Relief.

The Trial Court vide the judgment and decree dated 14.09.1992 dismissed the suit. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant. The First Appellate Court modified the judgment and decree of the Trial Court holding that the plaintiff-appellants were in control and management of the Harijan Dharamshala and the area marked by letters 'AEFD' and restrained the defendant-respondents from interfering in the management and control of the plaintiff-appellants on the Harijan Dharamshala and the property on which it was situated i.e. 'AEFD' in the plan Ex.D2 except in due course of law. The suit qua the area marked by letters 'BCFE' in the site plan Ex.D2 was dismissed. Aggrieved by the same, the plaintiff-appellants have approached this Court by way of the present regular second appeal.

Learned counsel for the plaintiff-appellants would contend that the First Appellate Court ought to have decreed the suit qua the portion

‘BCEF’ also as the Sabha is the owner of the said property. It is urged that the First Appellate Court erred in holding that the defendant-respondent No.1 was owner in possession thereof.

Per contra, learned counsel for defendant-respondent No.1 has contended that Faquir Chand (defendant-respondent No.1) had earlier filed a suit for permanent injunction restraining the defendant-respondents therein from taking forcible possession of the property in dispute therein. In the said suit, a compromise was arrived at between Faquir Chand (defendant-respondent No.1) and the predecessor-in-interest of some of the present plaintiff-appellants. As per the compromise, the predecessor-in-interest of some of the present plaintiff-appellants were restrained from taking possession of the site ‘BCFE’ as depicted in the site plan Ex.D2 and the judgment and decree dated 07.02.1975 (Ex.D1) accompanied by site plan (Ex.D2) was *res judicata* between the parties.

Heard.

In the present case the First Appellate Court, relying on the judgment and decree (Ex.D1) and site plan (Ex.D2), has held that Faquir Chand – defendant-respondent No.1 – was owner in possession of the property shown as ‘BCFE’ in the site plan Ex.D2 and accordingly modified the findings on issue Nos.3 and 6. Learned counsel for the plaintiff-appellants has not been able to show any evidence barring the fact that when the property was given to the Harijans by the Gram Panchayat, Faquir Chand (defendant-respondent No.1) was one of the signatory. There is no material forthcoming in the form of credible evidence to show that the plaintiff-appellants had control over the property marked by letters ‘BCFE’ in the site plan Ex.D2. In the absence of the same, I do not find any illegality and

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infirmity in the judgment and decree passed by the First Appellate Court. No question of law, much less any substantial question of law, arises in the present case for determination by this Court. The present regular second appeal, which is wholly devoid of any merit, is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
JUDGE

11.04.2023
Yogesh Sharma

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