

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

(104+226)

**CM-1047-C-2023 in/and
RSA-2243-2016 (O&M)
Date of Decision : February 10, 2023**

Karora Singh (deceased) through his LRs

.. Appellants

Versus

Prem Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Ekta Thakur, Advocate, for the applicant-appellant.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-1047-C-2023

Present application has been filed for impleading legal heirs of appellant Karora Singh, who unfortunately died on 04.09.2021, during the pendency of the present Regular Second Appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, present application is allowed. Legal heirs of appellant Karora Singh, the details of whom are given in para 2 of the application, are allowed to be impleaded in the present Regular Second Appeal and the amended memo of parties attached with the present application is taken on record.

CM-5854-C-2016

As prayed for, the application is allowed.

RSA-2243-2016

In the present Regular Second Appeal, the challenge is to the judgment and decree of the trial Court dated 15.01.2013 by which, the suit filed by the respondents-plaintiffs seeking compensation for malicious prosecution was decreed in his favour as well as to the order passed by the lower Appellate Court dated 19.01.2016 by which the appeal filed by the appellant herein was dismissed.

The facts which needs to be noticed herein are that on the complaint of appellant, an FIR No.47 dated 26.02.2000 was registered against the respondents-plaintiffs on the basis of which, the respondents-plaintiffs underwent a criminal trial ultimately to be acquitted of the allegations. After being acquitted, the plaintiffs filed a civil suit seeking compensation for the malicious prosecution against the appellant. Keeping in view the evidence, which came on record and by recording a clear finding that the complaint which was lodged by the appellant-Karora Singh against the respondents-plaintiffs, on the basis of which FIR No.47 dated 26.02.2000 was registered, amounted to malicious prosecution and the suit was allowed by the trial Court vide judgment and decree dated 15.01.2013 and the appellant was directed to compensate the respondents-plaintiffs with an amount of Rs.1,50,000/- along with interest @ 6% per annum.

Feeling aggrieved against the judgment of the trial Court, the appeal was preferred by the appellant herein which appeal also came to be dismissed on 19.01.2016. Hence, the present Regular Second Appeal.

Learned counsel for the appellants submits that though, a finding has been recorded that the complaint filed by the appellant on the

basis of which an FIR No.47 dated 26.02.2000 was initiated and the respondents-plaintiffs had to undergo the criminal trial before being acquitted, was malicious so as to entitle the respondents-plaintiffs a compensation, but the said findings are contrary to the judgment of this Court in ***RSA No.4591 of 2011 titled as Mohinder Kaur vs. Sant Kumar Thapar and another, decided on 06.09.2016.*** Hence, the judgments and decrees of the Court below are liable to be set aside.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The only argument being raised is that mere filing of the complaint on the basis of which an FIR had been registered, the ultimate acquittal of the accused cannot be termed as malicious prosecution on the part of the complaint unless and until the facts go to show that the complaint was filed with malicious intent. Reliance is being placed upon the judgment of the Coordinate Bench of this Court in ***Mohinder Kaur's case (supra).***

In the present case, the Courts below, on the basis of the facts and evidence which had come on record, have recorded a finding of malicious prosecution of respondents-plaintiffs at the hands of appellant. It has been mentioned that despite the judgment Ex.P-1 that both the parties are co-sharers and joint owners in possession, the complaint was filed by the appellant for the criminal trespass, which fact alone can prove that the facts were withheld from the police authorities even while making a complaint and the incorrect facts in the complaint shows the intent of the appellant of malicious prosecution as the parties were already in civil dispute with each other.

Learned counsel for the appellant has not been able to rebut that the recording of the said findings by the Courts below, is contrary to the facts/evidence on record.

In the absence of any perversity being pointed out, it cannot be said that the criminal proceedings were initiated against the plaintiffs-respondents without there being any malice. As nothing perverse has been pointed out either in the facts or the evidence on record qua the findings recorded by the Court below, no interference is called for by this Court in the present Regular Second Appeal.

Qua the principle of law in ***Mohinder Kaur's case (supra)*** being relied upon by the appellant, the said judgment is being misread by the appellant. In the said judgment, it has been mentioned that there has to be more than a wrongful act and the prosecution should be with a malicious intent so as to seek damages. The findings which have been recorded by the Court below record the malicious intent on the part of the appellant to initiate the criminal proceedings against the respondents-plaintiffs. Once the said finding has been recorded, the judgment in ***Mohinder Kaur's case (supra)*** will not come to the rescue of the appellant herein.

At this stage, learned counsel for the appellant also relies upon the judgment of the Delhi High Court in ***RSA No.259 of 2005 titled as Vijendra Kumar vs. Ved Prakash Gupta, decided on 29.03.2007*** to contend that the acquittal of the respondents-plaintiffs on the basis of non-proving of the allegations by the police authorities, cannot allow the accused to initiate proceedings against the complaint.

The said judgment will also not come to the rescue of the appellant for the reason that in the present case, the police authorities presented the facts which had come during the investigation. Nothing has been brought to the notice of this Court that any officer related with the investigation of the case, did not perform the duties required under law. In the absence of any such factum in the judgments of the Courts below, no benefit of judgment in *Vijendra Kumar's case (supra)* can be allowed in favour of the appellant.

Keeping in view the facts and circumstances mentioned hereinbefore as no perversity in the judgments of the Court below has been pointed out, no ground is made out for interference of this Court in the present Regular Second Appeal.

Dismissed.

As the main appeal has been dismissed, present application i.e. CM-5855-C-2016 also stands dismissed.

February 10, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No