

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. SAO-54-2018 (O&M)
Reserved on: 07.08.2023
Date of decision: 17.08.2023

MAHAVIR
Versus
..Appellant

M/S RAD INTERNATIONAL & ORS.
..Respondents

2. SAO-55-2018 (O&M)

MAHAVIR
Versus
..Appellant

M/S RAD INTERNATIONAL & ORS.
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajiv Sharma, Advocate
for the appellant.

Mr. S.K.Tripathi, Advocate
for respondents.

ANIL KSHETARPAL, J.

1. With the consent of the learned counsel representing the parties, two connected appeals arising from a common judgment passed by the First Appellate Court shall stand disposed of.
2. For comprehending the controversy involved in the present case, the relevant facts are being noticed from SAO-54-2018. The First Appellate Court has remitted the case back to the trial Court for deciding the matter afresh. The correctness of the aforesaid order is assailed in these two appeals. In fact, two civil suits were filed by the appellants herein for the grant of decree of declaration to the effect that the plaintiffs and proforma

entries in favour of defendants No.1 to 5 does not affect their rights, title or interest. A decree for permanent injunction was also prayed for in order to restrain defendants No.1 to 5 from taking any advantage of the entry in the revenue record and from alienating the same in any manner. In the alternative, they also sought decree of declaration that defendants No.1 to 5 are tenants on 1/3rd *batai* (share) instead of Rs.12/- in the revenue record. In the both the suits, the plaintiff-firm is stated to have purchased land measuring 24 kanal and 3 marlas as well as land measuring 40 kanals through two different sale deeds executed on 22.01.2007, from Kartari Devi son of Sh. Prem Singh. While defending the case, defendants No.1 to 5 claim that they are in possession as a *gair marusi* over the entire land measuring 64 kanal and 3 marlas for more than last 50 years. Defendant No.6 filed a separate written statement claiming that he is owner in possession to the extent of half share in the suit land measuring 24 kanal and 3 marlas.

3. The trial Court on the one hand held that the plaintiff purchased the property through two different sale deeds from Smt. Kartari Devi. Sh.Om Parkash, Sh. Bhim Sen and Sh. Roshan Ram etc. sold the property in favour of Smt. Kartari Devi and Sh. Mahesh, the proforma defendant No.6 came in possession of some part of the property as being son of Sh. Balbir, who was admitted to be in possession by defendants No.1 to 5. The trial Court also held that the tenancy rights in favour of Sh. Nathwa have not been merged into the ownership rights as Sh. Nathwa purchased only a part of the property. The prayer to grant declaration that the entry in the revenue record reflecting total rent of Rs.12/- is illegal, was also negatived by the trial Court on the ground that only Sh. Nathwa and his son could challenge the entry but it was never challenged by them. The trial Court also refused

to grant the decree of permanent injunction.

4. The First Appellate Court on reappreciation of evidence came to a conclusion that the trial Court misdirected itself while deciding the suit. The Court also came to a conclusion that a separate trial of two connected suits has caused prejudice and in Civil Suit No.82 of 04.12.2008, Smt. Surji wife of Sh. Nathwa has not been arrayed as a defendant, whereas, she has been arrayed as a defendant in Civil Suit No.262 of 2008. Sh. Mukesh Kumar @ Mahesh Kumar was impleaded as a proforma defendant in Civil Suit No.82 of 04.12.2008, but he was not arrayed in Civil Suit No.262 of 2008. The First Appellate Court also observed that the contesting defendants did not dispute the ownership of Sh. Mukesh and Sh. Surim and held that in such circumstances the judgment and decree passed by the trial Court is required to be set aside while directing the trial Court to decide the matter afresh. The correctness of the aforesaid order has been challenged in this revision petition.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused both the paperbooks.

6. The learned counsel representing the appellant in both the appeals contends that both the suits were filed separately as well as decided separately. He submits that the evidence was also recorded separately in both the suits. Hence, the First Appellate Court has erred in directing fresh decision of both the cases by the same Presiding Judge.

7. On the other hand, the learned counsel representing the respondent contends that the First Appellate Court keeping in view the facts and circumstances of the case has considered it appropriate to remit the matter back to the trial Court for deciding it afresh.

8. As per Order XLI Rule 23A of the Code of Civil Procedure,

1908, the Appellate Court has enabling power to remit the matter back to the trial Court if the decree is reversed in appeal and a retrial is considered necessary. Consequently, before the order of remand is passed, the Appellate Court is required to reverse the decree of the lower Court and form an opinion that a retrial is considered necessary. As already noticed, the First Appellate Court has found that there were more than one defects in the judgments passed by the Courts below while deciding both the suits. Neither the proper parties were impleaded in both the suits nor the Courts could examine the record in tandem and in connectivity with each other. The Court also found that the plaintiff's suit is based on two separate registered sale deeds, and the trial Court has dismissed both the suits.

9. In order to advance the cause of justice, the First Appellate Court has considered it appropriate to remit the matter back to the trial Court for deciding afresh.

10. In the peculiar facts of this case, this Court does not find that the jurisdiction exercised by the Court suffers from material error.

11. With reference to the arguments of the learned counsel representing the appellant in both the appeals, it is not in dispute that the trial of two separately instituted suits was held in a separate manner and even the evidence was led separately, however, the First Appellate Court has found that there is common thread that requires adjudication in both the suits.

12. In such circumstances, it has been found necessary by the First Appellate Court to direct entrustment of both the suits to the same Presiding Judge who should decide the cases simultaneously.

13. In such circumstances, this Court does not find it appropriate to interfere in the discretion exercise by the First Appellate Court, particularly

when, it is based upon the cogent reasons, which would advance the cause of justice.

14. Consequently, both the appeals are dismissed.
15. All the pending miscellaneous applications, if any, are also disposed of.

17th August, 2023

(ANIL KSHETARPAL)
JUDGE

Ay

Whether speaking/reasoned

Whether reportable

: Yes/No

: Yes/No