

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

108

RSA-2498-2019 (O&M)

Date of Decision : 30.01.2024

**SMT. JAMNA DEVI JI MEMORIAL TRUST
AND OTHERS**

..... Appellants

Versus

SHASHI GOYAL AND OTHERS

..... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

**Present : Mr. Sandeep Khunger, Advocate and
Mr. Saksham Khunger, Advocate for the appellants.**

**Mr. Arihant Jain, Advocate and
Mr. Arun Jindal, Advocate for respondent No.1.**

**Mr. Sanjiv Kumar Aggarwal and
Mr. Tejas Bansal, Advocate for respondents No.5 to 11.**

**Mr. Deepak Jain, Advocate and
Mr. Sushil Kumar, Advocate for respondents No.13 to 15.**

Mr. Rajesh Sethi, Advocate for the applicant-interveners.

ALKA SARIN, J. (Oral)

CM-740-C-2024

**This is an application under Order 1 Rules 8-A and 10 read with
Section 151 CPC filed by the applicant-interveners.**

**Learned counsel for the applicant-interveners states that he does
not press the present application at this stage with liberty to file the same
before the First Appellate Court.**

**Accordingly, the application is dismissed as not pressed with
liberty aforesaid.**

Learned counsel for the parties further state that the date of hearing in the main appeal may be preponed and the same may be taken up for hearing today itself. In view of the prayer made and with the consent of the learned counsel for the parties, the main case is taken on Board today itself.

RSA-2498-2019

1. Challenge in the present appeal is to the impugned judgment and decree dated 23.09.2013 passed by the Additional Civil Judge (Sr. Division), Dabwali, Sirsa as well as the judgment and decree dated 09.10.2018 passed by the Additional District Judge, Sirsa.

2. Learned counsel for the appellants would contend that during the pendency of the civil suit an application under Order 7 Rule 11 CPC was filed by defendant No.11 for dismissal of the suit on the ground that there was no compliance of the provisions of the Section 92 CPC. The said application was dismissed vide order dated 10.05.2007. Aggrieved by the said order, Civil Revision No.3970 of 2007 was preferred in this Court which was disposed off vide order dated 09.08.2012 holding that the suit of the plaintiff did not fall within the purview of Section 92 CPC. It is further the contention that no appeal was preferred against the said order dated 09.08.2012 and the same attained finality. It is further the contention that the First Appellate Court has dismissed the appeal only on the ground that the suit was not maintainable and that there was no compliance of the provisions of Section 92 CPC. It is further the contention that the appeal was not dealt with on merits. Learned counsel would further contend that once this Court in CR-3970-2007 had held that the provision of Section 92 CPC would not

be applicable and the said order had attained finality, the question of re-opening the issue by the First Appellate Court and dismissing the appeal only on the sole ground that there was no compliance of Section 92 CPC was not sustainable in law.

3. Learned counsel appearing on behalf of the respondents is not in a position to dispute the facts as narrated by the learned counsel for the appellants.

4. In the present case the issue regarding the applicability of Section 92 CPC stood decided upto this Court and attained finality. In view thereof, there was no occasion for the First Appellate Court to revisit the issue and dismiss the appeal on the ground that there was no compliance of Section 92 CPC.

5. In view of above, the present appeal is allowed. The judgment and decree passed by the First Appellate Court is set aside and the matter is remanded back to the First Appellate Court for a decision afresh on merits, in accordance with law. Parties to appear before the First Appellate Court on 27.02.2024 at 10.00 am.

30.01.2024
D.Bansal

(ALKA SARIN)
JUDGE

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