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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-1247-1992(O&M)
Date of decision : 24.07.2024

Malkiat Singh and another

... Appellants

Versus

Surjeet Singh and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Akshay Chadha, Advocate
for the appellants.

Mr.Ivan Singh Khosa, Advocate,
Mr.Shivam Grover, Advocate and
Ms.Shairon Tyagi, Advocate
for the respondents.

VIKAS BAHL, J.(ORAL)

1. The plaintiffs are in appeal against the judgment dated 05.05.1992 passed by the Ist Appellate Court, allowing the appeal of the respondents no.1,2 and 4 (defendants no.1, 2 and 4). The primary ground of challenge raised before this Court is that the cross-objections filed by the plaintiffs against the partial decree of the trial Court dated 15.06.1989 have not even been noticed much less considered by the Ist Appellate Court.

2. Learned counsel for the appellants has submitted that in the present case, the present appellants (plaintiffs) had filed a suit for declaration to the effect that the plaintiffs were joint owners in possession of 2/3rd share of land measuring 12B-19B-5B (pukhta) comprised in khewat

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no.852, 850, 851, 591, khatauni no.1252, 1253, 1254, 1250, 1251, 892, 893, 894, 895, 896 and khasra nos.12831, 12832, 12833, 12820 min, 12830 min situated in the revenue estate of Killa Raipur, Tehsil and District Ludhiana as per jamabandi for the year 1981-82. It is submitted that a similar prayer was made with respect to one plot as well as one house, the boundaries of which were detailed in the plaint and a further prayer was made for permanent injunction restraining the defendants from interfering in the possession of the plaintiffs. It is further submitted that the plea taken by the plaintiffs in the suit was that the agricultural land in question was a Joint Hindu Family Ancestral Coparcenary property and the plot as well as the house in question had been purchased with the income derived from the Joint Hindu Family property. It was further averred in the plaint that defendants no.2 to 4, who were sons of defendant no.1 Surjeet Singh, were claiming that Gobind Singh, father of the plaintiffs and defendant no.1, had executed a Will on 10.06.1979 in their favour but it was submitted that the said Will was not genuine. It is argued that in the written statement, respondents claimed ownership of the properties in question on the basis of the said Will and it was denied that the property was Joint Hindu Coparcenary property. It is submitted that the trial Court had partially decreed the suit of the plaintiffs and instead of granting relief to the plaintiffs being joint owners in possession to the extent of 2/3rd share, had only granted relief declaring the plaintiffs along with defendant no.1 to be joint owners in possession of 3/4th share of the agricultural land. Defendants no.2 to 4 were held to be owners of agricultural land to the extent of 1/4th

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share and the house and the plot were also held to be the ownership of defendants no.2 to 4 on the basis of the aforesaid Will.

3. Learned counsel for the appellants has stated that respondents no.1, 2 and 4 (defendants no.1, 2 and 4) had filed an appeal before the Ist Appellate Court. It is submitted that since the present appellants were also aggrieved with the findings of the trial Court on several issues and also with the partial decree of the suit, they had filed cross objections before the Ist Appellate Court. A copy of the said cross objections, which have been referred to, has been annexed as Annexure A-4 with CM-7234-C-2024. It is submitted that a perusal of the zimni orders would show that the said cross objections were duly registered and notice was issued in the same but a perusal of the judgment of the Ist Appellate Court would show that neither the said cross objections have been mentioned in the head note of the judgment nor the factum of same having been filed has been recorded in the body of the judgment. It is submitted that the judgment of the Ist Appellate Court would show that the detailed cross objections filed have not even been remotely considered much less decided by the Ist Appellate Court and thus, the said cross objections have remained undecided. It is submitted that in such circumstances, the impugned judgment of the Ist Appellate Court deserves to be set aside on the said ground alone and the matter deserves to be remanded back to the Ist Appellate Court for fresh decision with a further direction to the Ist Appellate Court to decide the appeal fresh along with the cross objections filed by the appellants. In support of his arguments, learned counsel for the appellants has relied upon the judgment of the Hon'ble



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Supreme Court in ***Dheeraj Singh vs. Greater Noida Industrial Development Authority & Ors.*** reported as ***2023 SCC OnLine SC 768*** and also on the judgment of the Hon'ble Supreme Court in ***Badru (since deceased) through Legal Representative Hari Ram and others vs. NTPC Limited (formerly National Thermal Power Corporation Limited) and others*** reported as ***(2019) 20 Supreme Court Cases 652***.

4. On the other hand, learned counsel for the respondents has submitted that a perusal of the grounds of appeal in the regular second appeal would show that no plea has been taken by the present appellants to the effect that they had pressed their cross objections before the Ist Appellate Court and thus, they are not entitled to raise the present plea. It is further submitted that a closer perusal of the judgment of the Ist Appellate Court would show that although the factum of the cross objections having been filed and a specific decision on the same is not there but the issues/pleas which arise in the present case including those arising in the cross objections have been decided. Learned counsel has referred to paragraph 15 of the impugned judgment to show that the primary grievance of the appellants was that the finding on the Will under Issue no.4 was not legal and valid and the Ist Appellate Court had considered the evidence of the Will and had come to a conclusion that the Will had been validly executed. It is submitted that even with respect to other aspects, the Ist Appellate Court had given an affirmative finding and thus, it cannot be said that the cross objections have not been decided. Learned counsel has further submitted that in the case of ***Dheeraj Singh (supra)*** relied upon by learned



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counsel for the appellants, in paragraph 18, it had been recorded by the Hon'ble Supreme Court that the issue raised by the appellants in the cross objections therein had not been considered by the High Court whereas a closer reading of the present case would show that the said issues have been considered by the Ist Appellate Court. Thus, the prayer made by the appellants for remanding the matter has been opposed by the learned counsel for the respondents.

5. This Court has heard learned counsel for the parties and has perused the paper book.

6. The plaintiffs-appellants had filed a suit with the following prayers:-

*“13. Under the circumstances as stated above that it is respectfully prayed **that a decree for declaration to the effect that the plaintiffs are the joint owners-in-possession 2/3rd share of land measuring 12B-19B-5B (pukhta) comprising in khewat no.852, 850, 851, 591, khatauni no.1252, 1253, 1254, 1250, 1251, 892, 893, 894, 895, 896 and khasra nos.12831, 12832, 12833, 12820 min, 12830 min situated in the revenue estate of Killa Raipur, Tehsil and District Ludhiana as per jamabandi for the year 1981-82 and***

*a) **house shown** in “red” in the plan marked A and bounded as North: Surjit Singh, South: Thakar Singh, East: Street, West Bakhtawar Singh.*

*b) **Plot shown** in red in the plan marked bounded as:*

North: Street, South: Mansha Singh, East: Street, West Gurmail Singh

*both situated in the abadi of village Killa Raipur, Tehsil and District Ludhiana **being the Hindu Coparcenary properties in the hands of their father Shri Gobind Singh (now deceased)***



and that the defendants nos.2 to 4 have no right interest or concern over the suit properties i.e., land, house and plot and a decree for permanent injunction restraining the defendants from interference, dispossessing and also from alienating, mortgaging or disposing off the suit properties in any manner whatsoever, be passed in favour of the plaintiffs and against the defendants with costs and such other and alternate relief to which this honourable court deem fit may also be granted in favour of the plaintiffs with costs.”

A perusal of the above would show that the plaintiffs had claimed 2/3rd share in the agricultural land and had also claimed declaration qua one house and one plot. The plea raised in the plaint with respect to the agricultural land was that the same was Joint Hindu Family Coparcenary Property and with respect to the plot and house, it was stated that the same had been purchased with the income derived from the Joint Hindu Family property. It was further stated that the Will dated 10.06.1979 propounded by defendants no.2 to 4 from Gobind Singh, father of the plaintiffs-present appellants was not legal and valid and in the written statement, defendants/respondents have relied upon the Will from Gobind Singh to state that defendants no.2 to 4 had become the owner of the property and had further denied that the property was Joint Hindu Family Coparcenary property.

7. The learned trial Court had framed the followings issues:-

“1. Whether the plaintiffs are entitled to the declaration prayed for?OPP

2. Whether the plaintiffs are entitled to the injunction prayed for?OPP



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3. *Whether the suit property is coparcenary property qua the plaintiffs?OPP*

4. *Whether Shri Gobind Singh executed a valid will dated 10.8.1979 in favour of Avtar Singh, Amritpal Singh and Pritpal Singh defendants. If so, its effect? OPD*

5. *Relief.”*

Under Issue no.3, the trial Court had held that the agricultural land was Joint Hindu Family Coparcenary property but the house and plot were not Joint Hindu Family Coparcenary property. Under Issue no.4, it was observed that the Will propounded by the defendants was duly executed by the deceased and Issue no.4 was finally decided by observing that the said Will would entitle defendants no.2 to 4 to become owner of 1/4th share of agricultural land as Gobind Singh, who had executed the Will, had 1/4th share in the said land as the same was Joint Hindu Family Coparcenary property. Under Issue nos. 1 and 2 as well as relief clause, defendants no.2 to 4 were held to be the owners of the house and plot and also 1/4th share of the agricultural land on the basis of the Will and the plaintiffs along with defendant no.1 were declared to be joint owners in possession of 3/4th in the agricultural land.

8. The defendants have filed an appeal against the said judgment before the Ist Appellate court. It is not in dispute that the present appellants (plaintiffs) filed detailed cross objections. The relevant portion of the said cross objections is reproduced hereinbelow:-

“IN RE:APPEAL

1- Shri Surjeet Singh son of Gobind Singh, resident of village Qilla Raipur, Tehsil and District Ludhiana;



- 2- *Shri Avtar Singh son of Sh. Surjeet Singh,*
3- *Shri Pritpal Singh son of Sh. Surjeet Singh,*
residents of village Qilla Raipur, Tehsil and District
Ludhiana.

DEFENDANTS/APPELLANTS

VERSUS

- 1- *MALKIAT SINGH* 2- *CHARAN SINGH*
sons of Sh. Gobind Singh, residents of village
Qilla Raipur, Tehsil and District Ludhiana;

PLAINTIFFS/RESPONDENTS/OBJECTORS

- 3- *AMRITPAUL SINGH son of Sh. Surjeet Singh,*
resident of village Qilla Raipur, Tehsil and District
Ludhiana.

DEFENDENT/RESPONDENT

“CROSS OBJECTIONS”

Sir,

*The above-named plaintiffs/Respondents numbers 1 and 2 / objectors file this **CROSS OBJECTION** against the part of the decree and judgment, appealed from, in this case and set forth the following grounds of objection in the said part of the decree under Order 41 Rule 22 of The Code of Civil Procedure:-*

1.) THAT the finding on issue no.3, so far as it runs against the plaintiff/ respondents is erroneous and is unsustainable both factually and legally and is liable to be quashed. The learned Trial Court erred in holding that the house and the plot in dispute were not proved, to be coparcenary property; whereas on the contrary the same stand amply established as being Joint Hindu Family Coparcenary Property on record and this part of the decree and judgment is liable to be set-aside accordingly.



2.) THAT the finding on issue no. 4 regarding the alleged WILL Ex. D-1, is erroneous both factually and legally and also circumstantially and the same suffers from a superficial and defective approach and from misappreciation of evidence on record and cannot be maintained inter-alia because:-

(A) That it is clear from the record that the attesting witness of the said Will Ex- D-1 were related interse and interested in Surjeet Singh and other defendants and presumably they Joined hands and manipulated to create a false Will but this fact has not been properly appreciated by the Learned Trial Court.

(B) THAT the alleged Will (Ex. D-1) is exfacie doubtful and is shrouded with suspicious circumstances, which remain undisputed and unremoved. It is apparent from the record that Shri Gobind Singh was illiterate aged 82 years, with a feeble mind and was under the strict control, pressure and evil influence of Surjeet Singh defendant and the alleged Will, if any, is not a product of a free, independent and healthy mind of the Legator. The will is unnatural inafficious_oblivious to the moral and legal claims of the plaintiff/respondents and other kinship, regardless of the nature of suit property and is based on wrong facts and reasoning and groundless prejudices.

(C) THAT no valid, enforceable and reliable



Will stands proved by any independent and reliable evidence. It may not be out of place to mention here that inspite of the request of the plaintiff and the direction of the learned Trial Court, the defendants failed to produce the relevant witness on the same day and further cleverly gave up one of the attesting witness though present, after examining the other witness on false assertion, which fact seriously prejudiced the plaintiff/ respondents and resulted in a grave miscarriage of Justice.

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4.) THAT the Learned Trial court has erred in holding that the defendants no.2 to 4 were entitled to 1/4th share of any share in the suit property and that Sh. Gobind Singh was competent to make Will to the extent of 1/4th share.

5.) THAT the plaintiff/respondents are entitled to the entire claim as laid in the plaint and the decree dismissing part of the plaintiffs' suit is contrary to Law and facts on the file and the Same is liable to be set aside."

Specific averments in the said cross objections were raised with respect to Issue no.3 on the aspect of finding of the trial Court on Joint Hindu Family Coparcenary property and Issue no.4 with respect to Will and other aspects. With respect to the Will, several factors including the factor of attesting witness of the Will being related inter se and being interested in Surjeet Singh and other defendants and also the aspect that Gobind Singh was illiterate and was aged 82 years and was of feeble mind as also the fact



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that the Will was shrouded with suspicious circumstances and was unnatural were raised. A perusal of the zimni orders moreso zimni order dated 03.10.1989 would show that notice was issued on the said cross objections to the other side. The zimni oder dated 03.10.1989 is reproduced hereinbelow:-

*“Present: Sh. Dina Nath for counsel for
objector/Respondents No.1 & 2.*

*Cross objection in appeal for resondent no.1 & 2
filed. Notice to opposity party through counsel. Case fixed for
10.11.89 date already fixed in the appeal on deposit of process
fee.*

*Sd/- ADJ
3.x.89”*

9. However, in spite of the above, there is no reference to the cross objections made in the entire judgment of the Ist Appellate Court. Neither a reference has been made in the head note of the judgment nor while marking the presence of the counsel for the present appellants did the Ist Appellate Court refer to him as counsel for cross objectors. In paragraph 1 of the judgment it has only been recorded that the defendants had filed an appeal against the judgment and decree dated 15.06.1989, without making any reference to the said cross objections filed by the present appellants. In paragraph 7 although it has been stated by the Ist Appellate Court that the respondents had appeared after notice had been issued but it has not been recorded that any cross objections had been filed by them. Paragraph 17 which deals with the finding of the case only records the fact that the appeal succeeds and is accepted and the judgment and decree under appeal is set aside and the suit of the plaintiffs is dismissed. There is no observation or



finding with respect to the cross objections. It is thus apparent that the cross objections have not been noticed much less decided by the Ist Appellate Court and thus, the impugned judgment deserves to be set aside and the matter deserves to be remanded on the said ground alone.

10. The Hon'ble Supreme Court in the case of ***Dheeraj Singh (supra)*** has held as under:-

12. Order 41 Rule 22, which is the governing law in the present case, elaborates on the remedies available to a respondent in the court of first appeal where an original decree has been challenged. An analysis of the said provision, in our opinion, is essential to adjudicate upon the present case.

13. In cases where the decree passed by the court of first instance is in favor of the respondent in whole, in such circumstance, no remedy exists in favour of the respondent to appeal such decree, since no right to appeal can be vested onto a party, which is successful.

14. However, in cases where the decree given by the court of first instance, is partly in favour of the respondent, but is also partly against the respondent, two remedies within Order 41 Rule 22 remain with the respondent, which are (i) To file their cross objections and, (ii) To support the decree in whole. A third remedy in law also exists, which is the right to file a cross appeal, which will also be discussed in brief.

*15. In cases where the opposing party files a first appeal against part or whole of the original decree, and the respondent in the said first appeal, due to part or whole of the decree being in their favour, abstains from filing an appeal at the first instance, in such cases, to ensure that the respondent is also given a fair chance to be heard, **he is given the right to file his cross objections within the appeal already so***



instituted by the other party, against not only the contentions raised by the other party, but also against part or whole of the decree passed by the court of first instance.

16. In a similar circumstance, where the other party in the first instance has preferred an appeal, apart from the remedy of cross objections, the respondent can also file a cross appeal within the limitation period so prescribed, which in essence is a separate appeal in itself, challenging part or whole of the original decree, independent of the appeal filed by the other party. The respondent also has the right to fully support the original decree passed by the lower court in full.

17. In the present case at hand, the appellants herein, in the court of first appeal filed a cross objection. It is the claim of the appellants herein that his cross objection was not considered by the High Court while passing the impugned judgment. At this stage, it must be noted that while cross objections, unlike a regular appeal, are filed within an already existing appeal, however, as per [Order 41 Rule 22 of the CPC](#), cross objections have all the trappings of a regular appeal, and therefore, must be considered in full by the court adjudicating upon the same.

18. A bare perusal of the impugned order would show that the issues raised by the appellants in their cross objections have not been considered by the High Court. No mention of the cross objections filed by the appellants herein have been found in the said judgment. While the High Court has given a detailed analysis of all other issues raised in the appeal and the both the lower court orders, however, the cross objections in specific, finds no discussion, much less even a mention.

19. In the case of [Santosh Hazari Vs. Purushottam Tiwari \(Dead\) by LRs.1](#), this Court held that the court of appeal has a duty to apply its mind to all issues raised before it, and to



discharge such duty, it must also record its findings against all such issues raised. For the sake of convenience, the relevant paragraph of *the said judgment* is being extracted herein:

"The Appellate Court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law. the whole case is therein open for rehearing both on questions of fact and law. The judgment of the Appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the Appellate Court.

While reversing a finding of fact the Appellate Court must come into close quarters with the reasoning 1 (2001) 2 SC 407 assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the First Appellate Court had discharged the duty expected of it."

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21. Further, in the case of *Jitendra Prasad Nayak Vs. Anant kumar Sah and Anr.*3, this Court, in an identical circumstance wherein the cross objections filed by the appellant therein was not considered by the court of first appeal, held that remanded the case back to the High Court and observed as under:

"....Admittedly, a cross-objection was filed by the appellant-landlord against the rejection by the first appellate court of the existence of one of the two grounds of eviction. However, while deciding the appeal of the respondent-tenant in his favour against



*the decision of the first appellate court on the other ground, the existence of the cross objection appears to have been missed by the High Court **with the result that there is no decision given on the cross objection. The impugned judgment cannot, therefore, be sustained inter alia for this reason. We are also of the opinion that the question relating to existence of the ground of bona fide need which has been decided in favour of the tenant requires a fresh determination by the High Court along with the other point relating to default in payment of rent which was the subject matter of cross-objection....."***

*22. The abovementioned discussions and judgments, when contextualized to the present case, **would show that the High Court was under an obligation to consider the cross objections filed by the Appellants herein. Since such an obligation was not discharged while passing the judgment in appeal, we are of the considered opinion that the matter is fit for remand to the High Court for fresh adjudication on the grounds raised in the cross objections during appeal by the appellants herein. Accordingly, the present appeals are therefore allowed to such an extent."***

A perusal of the said judgment would show that it has been specifically observed that where a decree given by the Court of first instance is partially in favour of a particular party and is partially against him, then among other remedies, he has the right to file cross objections and that in case such cross objections are filed, the same have all the trappings of a regular appeal and are required to be considered in full by the Court adjudicating upon the same. Reliance in the said judgment has been placed



upon the case of ***Santosh Hazari vs. Purushottam Tiwari (Dead) by LRs*** reported as ***(2001) 2 SCC 407*** in which it was observed that first appeal is a valuable right of a party and the whole case is therein open for rehearing both on questions of law and fact and the Ist Appellate Court must apply his mind to all the issues. Reliance has also been placed in the said judgment upon the judgment of the Hon'ble Supreme Court in ***Jitendra Prasad Nayak vs. Anant Kumar Sah and another*** reported as ***(1998) 9 SCC 383*** wherein it was observed that when the cross objections filed by the appellant therein were not considered, the matter was remanded back to the High Court. The Hon'ble Supreme Court in the case of ***Dheeraj Singh (supra)*** after considering the law laid down in the abovesaid judgment observed that since the obligation on the part of the High Court to consider the cross objections was not discharged by the High Court, thus, the matter was remanded back to the High Court for fresh consideration.

11. In the case of ***Badru (since deceased) through legal representative Hari Ram and others (supra)***, the Hon'ble Supreme Court had held as under:-

“10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals and while setting aside the impugned order insofar as it relates to the dismissal of the cross objection, remand the case (cross objection) to the High Court for deciding the cross objection on its merits in accordance with law.

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13. *The High Court having dismissed the appeals filed by the State/NTPC was, therefore, required to examine as to whether any case was made out by the landowners (appellants*



herein) in their cross objection for enhancement of compensation.

14. We find from the impugned order that the High Court, in para 24, dismissed the cross objection without assigning any reason. **The order rejecting the cross objection reads as under:**

25. Crossobjection, if any, shall also stand disposed of.

15. Order 41 Rule 22(4) of the Code, provides that where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

16. In our considered opinion, merely because the High Court dismissed the appeals filed by the respondents herein though on merits, yet that by itself would not result in dismissal of the landowners' cross objection also. In our view, the cross objection had to be disposed of on its merits notwithstanding the dismissal of the appeals as provided by in Order 41 Rule 22 (4) of the Code by assigning reasons."

In the above said case although the cross objections were disposed of by virtue of the dismissal of the appeals yet the Hon'ble Supreme Court came to the conclusion that the same have to be disposed of on its merits by assigning appropriate reasons and cannot be disposed of merely on the fact that the appeals have been dismissed inasmuch as, as per the provision of Order 41 Rule 22(4) CPC, where even the original appeal is withdrawn or dismissed in default, the cross objections are still required to be heard and determined after such notice to the parties.



12. The law laid down in the above said cases fully applies to the present case and thus, the judgment of the Ist Appellate Court deserves to be set aside on the said point alone and the matter deserves to be remanded back. Moreover, a closer perusal of the judgment of the Ist Appellate Court would show that even the pleas raised by the appellants / cross objectors in the cross objections have not been considered and the arguments to the contrary raised on behalf of the respondents are meritless. In paragraph 15 of the judgment of the Ist Appellate Court which has been highlighted by the learned counsel for the respondents, although the Will has been upheld but the specific pleas raised in the cross objections by the present appellants including the fact that the attesting witnesses were related inter se and were interested in Surjeet Singh and also the fact that Gobind Singh was illiterate and was aged 82 years and did not have a healthy mind and that the Will was unnatural and other aspects regarding the Will have not been considered by the Ist Appellate Court. Similarly with respect to other issues, the pleas in the cross objections have not been considered. Even the argument raised by the learned counsel for the respondents that there is no specific plea in the grounds of appeal to the effect that the cross objections were pressed, would also not call for upholding the impugned judgment. It is not in dispute that the suit of the present appellants was only partially decreed and the cross objections had been filed by them. Due notice had been issued in the said cross objections. Thus, it was incumbent upon the Ist Appellate Court to decide the said cross objections and in case the same were not pressed, the said aspect had to be mentioned in the judgment.



Learned counsel for the appellants has been able to show that in the present case, there is an error apparent on the face of the record inasmuch as the cross objections regarding which notice had been duly issued, have not even remotely been considered. Moreover, the grounds of appeal in a regular second appeal are not to be read as a plaint and in case the Court comes to the conclusion that the impugned judgment is contrary to law and the said aspect is apparent from the record of the case, then it is open to the Court to set aside the impugned judgment.

13. It would be relevant to note that the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of CPC and that in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon'ble Supreme Court in the case of **Pankajakshi (dead) through legal representatives and others Vs. Chandrika and others and other connected matters** reported as **(2016) 6 Supreme Court Cases 157**, it was observed that Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, which provision would necessarily continue as a law in force. Section 41 of the Punjab Courts Act provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds mentioned therein and one such ground i.e. ground No.(a) is the decision being contrary to law or to some custom or usage having the force of law.

14. This Court is of the opinion that in the present case, the impugned judgment is against the law laid down by the Hon'ble Supreme



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Court in the judgments which have been reproduced hereinabove and keeping in view the above said facts and circumstances, the present appeal is partly allowed and the judgment of the Ist Appellate Court dated 05.05.1992 is set aside and the matter is remanded to the Ist Appellate Court to decide the case afresh.

15. Needless to say that the Ist Appellate Court would decide the civil appeal no.60/162 of 04/08.09.1989 filed by the defendants along with cross objections, which have been filed by the present appellants.

16. Parties are directed to appear before the Ist Appellate Court on 21.08.2024. The Ist Appellate Court is further directed to decide the case afresh as expeditiously as possible, preferably within a period of 3 months from the date of the said appearance.

17. It is clarified that this Court has not opined on the merits of the case and the Ist Appellate Court would decide the appeal as well as cross objections on merits independently and in accordance with law.

18. Pending application, if any, stands disposed of in view of the above said order.

(VIKAS BAHL)
JUDGE

July 24, 2024
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No