

[115] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1885-1989 (O&M)
Date of Decision : 10.04.2024

NAWAL SINGH AND OTHERS ...Appellants

versus

NAHAN FOUNDARY LIMITED, NAHANRespondent

RSA-529-1990 (O&M)

NAWAL SINGH AND OTHERS ...Appellants

versus

NAHAN FOUNDARY LIMITED, NAHANRespondent

Coram : HON’BLE MR. JUSTICEANIL KSHETARPAL

Present : Mr. Chanderhas Yadav, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

C.M.No.17091-C-2016 IN RSA NO.1885-1989
C.M.No.17096-C-2016 IN RSA NO.529-1990

[1]. For the reasons stated in these applications, which are supported by an affidavit, the same are allowed and both the appeals are restored to its original number. With the consent of the learned counsel representing the Appellant, both the appeals are taken on Board.

MAIN

[2] Though only application for restoration of the two connected old appeals are listed. However, with the consent of the counsel representing the appellant, the arguments in appeals have been heard.

[3] In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

[4] Two separate suits were filed, one by Nahan Foundary Limited, Nahan for grant of decree of permanent injunction, whereas the other suit filed by Sh. Nawal Singh and others for grant of decree of possession. It is the case of Nahan Foundary Limited that they are tenants in possession of the property from 1931 and the company has been allotted some part of the land on 31.05.1961, by the Government. Whereas, it is the case of Sh. Nawal Singh and others that they were allotted 4 Bighas and 6 Biswas land in various Khewats including Khewat No.433 on 07.07.1955 and they are entitled to possession. Both the suits were consolidated. The Municipal Committee, Bahadurgarh, claimed that there is a passage in between the property.

[5] The trial Court dismissed the suit filed by the Nahan Foundary Limited, whereas the suit filed by Sh. Nawal Singh and others was decreed. As many as three appeals were filed before the First Appellate Court, one by the Municipal Committee and other two appeals were filed by Nahan Foundary Limited. Upon re-appreciation of the evidence, the First Appellate Court has dismissed the appeal filed by the Municipal Committee, whereas two appeals filed by Nahan Foundary Limited have been accepted. That is how these two appeals have been filed by Nawal Singh and others. The Municipal Committee has not filed

[6] Heard the learned counsel representing the Appellant at length and with his able assistance perused the paper book.

[7] The learned counsel representing the Appellant contends that there is no dispute that Sh. Nawal Singh and others were allotted 4 Bighas and 6 Biswas of land by the Custodian Department on 07.07.1955 (Ex-D-1). Subsequently, the same was confirmed on 03.01.1956 and thereupon, the sale certificate dated 06.01.1956, was issued by the competent authority. He submits that Nahan Foundary Limited, Nahan was allotted 1 Bigha and 2 Biswas land comprised in Khewat No.433. Hence, the plaintiff's suit was required to be decreed.

[8] This court has considered the submissions of the learned counsel representing the appellant.

[9] The First Appellate Court held that the allotment in favour of the Sh. Nawal Singh and others as well as Nahan Foundary Limited, Nahan was correct, however, Nahan Foundary Limited, Nahan is in possession from 08.05.1931, by way of partition. Consequently, Sh. Nawal Singh and others can get possession only by seeking ejectment of the tenant because Nahan Foundary was allotted some part of the property.

[10] So in substance, the dispute is as to whether decree for possession in favour of Sh. Nawal Singh and others can be passed or not? The rival plaintiff in both the suits have been allotted land from a common Khewat by the Government. They have become co-sharer in the suit property. Hence the plaintiff Sh. Nawal Singh and others is required to file a suit for partition. Consequently, there is no error in the findings

[11] It may be noted here that the allotment of part of the property in favour of Sh. Nawal Singh and others and Nahan Foundary Limited, Nahan has not been set aside.

[12] Consequently, Sh. Nawal Singh and others may, if so advised, to avail their remedy as directed by the First Appellate Court.

[13] Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

[14] Accordingly, both the appeals are dismissed.

[15] All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

10.04.2024
/Raman

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