

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-872-2016 (O&M)
Date of decision: 19.01.2024

Bharat Singh and others ... Appellants

Versus

Guddi alias Urmila and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Aman Priye Jain, Advocate, for the appellants.

None for the respondents.

GURBIR SINGH, J.

1. The appellants-plaintiffs have preferred the present regular second appeal against the judgment and decree dated 18.01.2016 passed by learned Additional District Judge, Bhiwani, vide which, the appeal filed by them against the judgment and decree dated 27.05.2013 passed by learned Additional Civil Judge (Senior Division), Loharu, has been dismissed.

2. Briefly stated, the appellants-plaintiffs (hereinafter called, “plaintiffs”) filed a suit for declaration and permanent injunction to the effect that they are owners in joint possession of land, as mentioned in the plaint, and the respondents-defendants have no right, title or interest in the suit land. The plaintiffs claimed that their predecessors-in-interest

had been inducted as tenants over the suit land by the predecessors-in-interest of the defendants for the last more than 50 years and since then, they were in cultivable possession of the same. They have acquired occupancy rights qua the suit land in view of Sections 5 and 8 of the Tenancy Act. However, the defendants have refuted the claim of the plaintiffs by asserting that the predecessors-in-interest of the plaintiffs never cultivated the suit land. The plaintiffs failed to produce any document qua their claim with regard to occupancy rights. The plaintiffs lost before the courts below and their regular second appeal before this Court was also dismissed vide judgment dated 28.03.2016. An application to review the order dated 28.03.2016 was filed which was allowed vide order dated 12.08.2016 passed by this Court.

3. Learned counsel for the appellants has argued that an application dated 13.05.2015 (Annexure A-1) filed under Order 41 Rule 27 read with Section 151 CPC was moved by the appellants-plaintiffs before the first Appellate Court to produce and prove the following documents:-

- “i) The statement on account of disbursement of compensation regarding Khariff 2014 along with its information vide letter dated 27.04.2015.*
- ii) Fard Badar dated 02.08.2012*
- iii) FIR No.80 dated 18.05.2013*
- iv) Jamabandi of the year 2011-12, 2006-2007.*
- v) Judgment and decree in Civil Suit No.222 of 2012.”*

Reply to that application was filed. However, said application was not decided and remained pending whereas the appeal was decided as dismissed vide judgment and decree dated 18.01.2016.

4. No one has put in appearance on behalf of respondents when the matter is called.

5. I have heard the submissions of learned counsel for the appellants and have gone through the file.

6. While deciding the first appeal, the learned Appellate Court failed to take note of the pending application under Order 41 Rule 27 read with Section 151 CPC and also failed to decide whether additional evidence could be allowed to be led in evidence. When said application was filed by the appellants, it was the duty of the appellate Court to decide the same on merits. Under such circumstances, the judgment passed by the learned appellate Court deserves to be set aside.

7. In case ***Jatinder Singh and another Versus Mehar Singh, (2009) 17 Supreme Court Cases 465***, the application for additional evidence under Order 41 Rule 27 CPC was not decided by this Court. The Hon'ble Supreme Court set aside the judgment passed by this Court in Second Appeal and remitted it back to this Court for a decision afresh in the Second Appeal alongwith the application for additional evidence.

8. In view of above discussions but without commenting on the merits of the case, the judgment passed by the learned first Appellate Court is hereby set aside and the case is remanded back to the learned

Appellate Court to decide the application (Annexure A-1) filed by the appellants-plaintiffs and thereafter, decide the appeal in accordance with law.

9. Present appeal stands disposed of accordingly.
10. Parties are directed to appear before the learned Appellate Court on 07.02.2024.
11. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

January 19, 2024
sanjeev

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