

2024:PHHC:172923



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126

CR-5739-2024 (O&M)

Date of decision: 01.10.2024

Raj Singh

...Petitioner

Versus

Kamlesh Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Sumit Sangwan, Advocate for the petitioner.

VIKAS SURI, J.

1. This petition under Article 227 of the Constitution of India has been filed by the plaintiff for setting aside the order dated 20.08.2024, whereby the first Appellate Court has sought for a report from the trial Court on the re-cast issues after providing due opportunities to both the parties to lead their respective evidence.

2. Briefly, the petitioner/plaintiff filed a suit for declaration and injunction that plaintiff and proforma defendants are owners in possession in equal shares of the suit land on the basis of the judgment and decree dated 27.10.1990 and mutation No.650 dated 26.04.2005; and subsequent sale deed bearing No. 1613 dated 23.02.2007 are illegal, null and void; further, consequential relief of injunction was also sought, with a prayer to restrain defendant Nos.1 to 4 from alienating the suit property by taking benefit of mutation No.650 and sale deed dated 23.02.2007.

2.1 Upon notice of the suit, defendant Nos.1 to 3 filed their joint



written statement, whereas defendant Nos.4 (a), 4 (b) and 5 filed their separate written statements. Defendant No.7 admitted the claim of the plaintiff through its written statement. Defendant Nos. 2 (a), 2 (d) and proforma defendant No.7 chose not to contest the suit and were proceeded against *ex parte*.

2.2 The trial Court decreed the suit vide judgment and decree dated 19.02.2018 (Annexure P-1).

2.3. Aggrieved by the judgment and decree passed by the trial Court, respondent No.1 [defendant No.4 (b)/Kamlesh Devi] preferred an appeal before the learned Additional District Judge, Charkhi Dadri.

2.4 The first Appellate Court came to the conclusion that the issues had been wrongly cast and accordingly, the parties did not have proper opportunity to establish what was required to be proved and by whom. The parties had proposed re-casting of the issues, which are noticed in the order dated 22.12.2023 (Annexure P-3) and are extracted hereunder for reference:

- “i) Whether the Judgment & Decree dated 22.10.1990 are creating preferential rights in favour of four sons of Jasram including plaintiff Raj Singh vis-a-vis Mutation of inheritance entered in favour of seven natural heirs vide Mutation No.650 sanctioned on 26.04.2005?, And/Or Whether the Sale-deed No.1613 dated 23.02.2007 and all subsequent Sale-deeds on basis thereof in favour of purchasers are sham transaction as suit-land being alienated by vendors having no title? OPP.
- ii) If issue No.1 is proved in favour of plaintiff,



whether the plaintiff is entitled for any declaration or/and injunction on basis thereof? OPP.

- v) Whether the vendees on basis of Sale-deed No.1613 dated 23.02.2007 and of subsequent Sale-deeds on basis thereof, are the bonafide purchasers for valuable consideration without notice of earlier Judgment & Decree dated 22.10.1990? OPD/defendant No.4/defendant No.4(a)/defendant No.4(b).”

2.5 The first Appellate Court partly allowed the appeal vide order dated 22.12.2023 (Annexure P-3) holding that the proposed issues No.(i), (ii) and (v) could only be drawn after partly allowing the appeal. Resultantly, the matter was remanded to the trial Court for *denovo* proceedings to be initiated from the stage of framing of issues.

2.6 Still aggrieved, the petitioner assailed the order dated 22.12.2023 before this Court, by way of SAO-9-2024. The main contention raised in the said appeal was that the first Appellate Court erred in remanding the case to the trial Court without complying with the requirements of Order 41 Rule 23 A CPC. The said second appeal from order (SAO) was allowed vide order dated 13.05.2024 (Annexure P-7) and the order passed by the first Appellate Court, remanding the matter to the trial Court, was set aside. The first appeal was ordered to be restored to its original number. Further, this Court left it to the discretion of the first Appellate Court to seek a report from the trial Court, on the issues that had been re-framed. The order dated 13.05.2024 reads thus:

“1. On 19.03.2024, the following order was passed:-

“The learned counsel representing the appellant



inter-alia contends that Smt. Kamlesh had purchased the suit property during the pendency of the suit. Therefore, she was governed by the rule of lis pendens. He further submits that on the application of Smt. Kamlesh, she was impleaded as party and she led her evidence. Therefore, the First Appellate Court has erred in remanding the case back to the trial court without complying with the requirements of Order 41 Rule 23A CPC.

Notice of motion for 09.04.2024.

The petitioner shall have the liberty to serve the respondents through their counsel in the trial court.

Dasti only. To be listed in the urgent list.”

2. Learned counsel representing the parties have been heard at length.
3. Learned counsel representing the respondent No.1, upon being confronted with a situation, submits that he has no objection if the First Appellate Court seeks report from the trial Court on the issues, which have been re-framed and thereafter, proceed to decide the appeal.
4. Keeping in view the aforesaid facts, the appeal is allowed. The impugned order passed by the First Appellate Court remitting the matter back is set aside.
5. The appeal is restored to its original number. It shall be open to the First Appellate Court to seek report on the issues, which have been re-framed, from the trial Court.
6. The parties through their counsel are directed to appear before the First Appellate Court on 30.05.2024.”

2.7 Pursuant to the order dated 13.05.2024 passed by this Court, the first Appellate Court sought a report from the trial Court on the re-framed issues, and the same was to be submitted after providing due opportunities to both the parties to lead their respective evidence. The operative part of the order dated 20.08.2024 reads thus:



“Both parties gone stating at bar that after passing of impugned judgment & decree dated 22.12.2023 by this court and thereby remanding back the case to learned trial court to decide it afresh, learned trial court has initiated proceedings therein by reframing the issues and matter is running fixed in next month for PWs.

2. Since now Hon'ble High Court vide order dated 13.05.2024 has set aside judgment dated 22.12.2023 of this court and has directed this court to proceed with the appeal with liberty to seek report on the re-framed issues from the trial court, hence, in furtherance of directions of Hon'ble High Court, learned trial court is hereby directed to submit its observations qua re-framed/additional issues only after providing due opportunities to both parties to lead their respective evidence thereupon and the report of learned trial court must reach to this court within six months, i.e., up to 20.02.2025. Let copy of this order be sent to learned trial court forthwith for strict compliance.

3. Matter to come up on 20.02.2025 awaiting report of learned trial court.”

3. The petitioner still not being satisfied and feeling aggrieved, has impugned the order dated 20.08.2024 by way of the present petition.

4. Learned counsel for the petitioner has argued that the requirements of Order 41 Rules 23 A and 25 CPC have still not been complied with.

5. I have heard learned counsel for the petitioner and with his able assistance perused the record.

6. Admittedly, the appeal preferred against the judgment and decree dated 19.02.2018 passed by the trial Court was partly allowed and



the matter was remanded to the trial Court on the re-drawn issues, which have been extracted hereinbefore. Aggrieved by the said order, the petitioner had invoked jurisdiction of this Court, which resulted in the order dated 13.05.2024, the operative part of which has also been extracted hereinbefore.

7. On a query of the Court as to whether any further appeal was carried to the Hon'ble Supreme Court against the order dated 13.05.2024 passed in SAO-9-2024, learned counsel for the petitioner has very fairly stated that the said order has been accepted and has since attained finality.

8. On a conjoint reading of the orders dated 22.12.2023, 13.05.2024 and 20.08.2024, it is evident that the order dated 20.08.2024 is a consequence of the order dated 13.05.2024 passed by this Court in SAO-9-2024. Since the petitioner accepted the said order and did not challenge it in further appeal, it is not open to the petitioner to now assail its effect indirectly by way of the present petition.

9. Learned counsel for the petitioner has failed to show any illegality or perversity in the impugned order. It is not disputed that in view of order dated 13.05.2024 passed by this Court, the first Appellate Court was even otherwise vested with the jurisdiction to seek a report on the issues that had been re-framed.

10. In the light of the aforesaid discussion, no ground has been made out to warrant interference in the impugned order dated 20.08.2024, in exercise of the power of superintendence.



11. Resultantly, the present petition being bereft of merit, is dismissed.

October 01, 2024
sumit.k

(VIKAS SURJ)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No