



126 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.SAO-50-2017 (O&M)

Hardev Singh and others
....Appellants

Versus

Som Nath (since deceased) through his LRs and others
..Respondents

2.SAO-49-2017 (O&M)

Hardev Singh and others
....Appellants

Versus

Som Nath (since deceased) through his LRs and others
..Respondents

3.SAO-66-2017 (O&M)

Hardev Singh and others
....Appellants

Versus

Som Nath (since deceased) through his LRs and others
..Respondents

Date of decision: 08.05.2024

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.S.Salar, Advocate for the appellants

Mr.D.S.Malwai, Advocate for respondent no.1(i) to (iv),
2 and 3

ANIL KSHETARPAL, J (Oral)



1. These three connected Second Appeals against the order passed by the First Appellate Court remanding the case back to the trial court shall stand disposed of by a common order.

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The appellants (plaintiffs before the trial court) filed the first suit for the grant of decree of declaration to the effect that they are in joint possession of the land measuring 9 bighas 8 biswas and the defendants have no concern with the suit land. In the aforesaid suit, the defendants not only filed the written statement but also filed the counter claim. Subsequently, the plaintiffs filed the second suit no.525 dated 03.08.2006 for declaration regarding order no.9157 dated 11.05.2006 passed by the District Collector, Sangrur on the ground that such order is null and void and illegal with a consequential relief of permanent injunction. Both the suits were consolidated. The trial court, by a consolidated judgment dated 23.02.2015, decreed both the suits filed by the plaintiffs whereas dismissed the counter claim filed by the defendants. As many as three appeals were filed before the First Appellate Court. It was noticed by the First Appellate Court that in the second suit the issues, which require adjudication, were distinct and separate from the first suit. However, the trial court neither settled the issues nor permitted the parties to lead their evidence. The First Appellate Court also dismissed the counter claim filed by the defendants in the second suit though such counter claim was never filed. Thus, the



First Appellate Court remanded the case back to the trial court for fresh decision.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. Learned counsel representing the appellants contends that the second suit was in fact off shoot of the first suit. Hence, a separate and distinct issues in the second suit were not required to be framed. He further submits that the First Appellate Court has erred in remitting the case back to the trial court rather than seeking report from the trial court in the second suit.

6. This Court has considered the submissions made by the learned counsel representing the parties.

7. It is evident that a serious prejudice has been caused to the defendants as they were not given opportunity to lead evidence in the connected suit. The second suit was also for the grant of decree of declaration. It is also evident that the trial court was not even conscious of the fact that in the second suit the defendants never filed any counter claim. In these circumstances, the First Appellate Court came to the conclusion that the matter is required to be remitted back to the trial court. Order XLI Rule 23A of the Code of Civil Procedure, 1908 enables the appellate court to remit the matter back to the lower court if the findings of trial court are set aside and fresh decision of the case is found necessary. In the judgments passed by the First Appellate Court, the court has noticed that the judgment passed by the trial court suffers from more than one error, which has resulted in failure of justice.



8. In view of the aforesaid facts and discussion, this Court does not find it appropriate to interfere with the judgment passed by the First Appellate Court.
9. Hence, dismissed.
10. All the pending miscellaneous applications, if any, are also disposed of.

08.05.2024
rekha

(ANIL KSHETARPAL)
JUDGE

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