



125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO-78-2017 (O&M)

Date of decision: 25.07.2024

Kehar Singh

....Appellant

Versus

Yashpal Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sanjay Verma, Advocate for the appellant

Mr. Som Nath Saini, Advocate for respondents

ANIL KSHETARPAL, J (Oral)

1. The plaintiff assails the correctness of the First Appellate Court's order remitting the matter back to the trial court for fresh decision. The plaintiff filed a suit for the grant of decree of permanent injunction. The plaintiff and defendant no.1 & 4 are brothers. He claims that property marked by letters ABCD, which consist of two storied house, has fallen to his share in a family settlement. The defendants, while contesting the case, filed counter claim claiming that the plaintiff is not the owner of the property. In fact, the defendants are owners of the same. The trial court settled the following issues:-

"1. Whether the plaintiff is entitled for Permanent injunction restraining the defendants from interfering in possession of the plaintiff as detailed in the head note of the plaint? OPP.

2. Whether the suit of the plaintiff is not maintainable? OPD.

3. Whether the plaintiff has no locus standi to file and maintain the present suit? OPD.



4. Whether the plaintiff has no cause of action to file the present suit? OPD.

5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.

6. Whether the plaintiff has not come to the court with clean hands and concealed the true and material facts from the court? OPD

7. Whether the suit is liable to be dismissed with Special cost under Section 35-A CPC? OPD.

8. Relief.”

2. After permitting the parties to lead evidence on the issues culled out, the trial court decreed the plaintiff's suit whereas dismissed the counter claim filed by the defendants. The defendants filed the first appeal. The First Appellate Court has remitted the matter back to the trial court for fresh decision, on the following two grounds:-

i) the trial court did not cull out any issue with regard to the counter claim.

ii) proper issues were not framed by the trial court

iii) an application for additional evidence has been filed by the defendants to produce certified copy of the judgment dated 21.07.2016 passed by the learned Civil Judge (Junior Division), Bilaspur in the suit titled as 'Mohinder Singh vs. Kehar Singh', it was found by the First Appellate Court that the trial court has committed various errors while passing the impugned judgment.

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

4. Learned counsel representing the appellant contends that the First Appellate Court has erred in remitting the case back to the lower court only on settling fresh additional issues. He submits that the trial court's judgment has not been set aside on merits.



5. Per contra, the learned counsel representing the respondents submits that neither the trial court numbered the counter claim separately nor culled out any issue while examining the points in issue requiring adjudication in the counter claim. He submits that the defendants have not been granted proper opportunity to prove their counter claim as there was no issue. He further contends that trial court has dismissed the counter claim without making any discussion on the aforesaid aspect.

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

7. From the reading of the judgment passed by the First Appellate Court, it is evident that before passing the impugned order, the appellate court has examined the entire aspect of the matter. The First Appellate Court was also conscious of Order XLI Rule 24 of the Code of Civil Procedure, 1908, however, in the facts of the case the court found that re-trial of the case shall be necessary, particularly when the defendants-appellants have been deprived of their right to file separate appeal against dismissal of the counter claim due to error of the trial court.

8. In this case, the judgment passed by the trial court suffers from more than one error. Moreover, an application for additional evidence to produce subsequent judgment passed on 21.07.2016 has also been filed.



- 9. Keeping in view the aforesaid facts, this Court is of the opinion that the conclusion drawn by the First Appellate Court does not require any interference.
- 10. Dismissed.
- 11. All the pending miscellaneous applications, if any, are also disposed of.

25.07.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE