



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 47 of 2024 (O&M)

Date of Decision: 25.11.2024

Harvinder Singh alias Harminder Singh and Others

... Appellant(s)

Versus

Chhota Khan and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Arihant Jain and Mr. Kanish Jindal, Advocates
for the appellant(s).

Mr. Amardeep Tiwana, Advocate
for respondent No.1.

Anil Kshetarpal, J.

CM-20914-CII-2024

1. For the reasons stated in the application, the same is allowed
and delay of four days in filing the appeal is condoned.

SAO-47-2024

2. This second appeal has been filed by the defendants against the
First Appellate Court's Order remitting the matter back to the Trial Court.
Pursuant to supply of advance copy of the appeal, Mr. Amandeep Tiwana,
Advocate, has entered appearance on behalf of the contesting respondent
No.1 (plaintiff No.2) who filed the first appeal.

3. The plaintiffs filed a suit for declaration to the effect that they
are the owners in possession of the suit land measuring 3 bighas 3 biswas
situated in village Sidhuwal, Tehsil and District Patiala, with consequential

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relief of permanent injunction restraining the defendants from interfering in their possession in any manner whatsoever.

4. The plaintiffs claimed that the suit land was owned by Smt.Basanti widow of Sadhu Singh and thereafter, her daughter, namely Smt. Jeeto succeeded to the property. Smt. Jeeto sold the property to plaintiffs No. 1 and 2 and Chanan Khan, predecessor-in-interest of plaintiffs No.3 to 5 vide sale deed dated 05.01.1996 and the possession was delivered to plaintiffs No.1, 2 and Channan Khan. The defendants contested the suit.

5. Upon appreciation of evidence, the trial Court has culled out the following issues:-

“1- Whether the plaintiff is entitled to relief of declaration as prayed for? OPP

2- Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP

3- Whether the suit of the plaintiff is false and frivolous? OPD 4- Relief.”

6. After the parties were permitted to lead evidence, the trial Court partly decreed the suit while granting declaration that the plaintiffs are the owners in possession of the land measuring 3 bighas 3 biswas. During pendency of the suit, an application for culling out the additional issues was filed which was dismissed. Even the review application filed by the plaintiffs was dismissed. Ultimately, the suit was partly decreed on 31.10.2014. Plaintiff No.2 filed first appeal. During the pendency of the first appeal, plaintiff No.2 filed an application for framing the additional issues.

The First Appellate Court has allowed the appeal and remitted the matter

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back to the Trial Court for fresh decision.

7. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

8. The learned counsel representing the plaintiff No.2, the only contesting respondent, has produced a certified copy of a separate order passed by the First Appellate Court while allowing his application for framing additional issues. The concluding part of the order reads as under:-

“So far the case laws upon which counsel for respondent put reliance are totally distinguishable from the facts of the present case and keeping in view above mentioned detailed discussion of mine as well as in the light of case laws referred above upon which learned counsel for applicant/appellant put reliance, the application in hand carries weight in it and same is hereby allowed and the learned trial court is directed to frame additional issue in respect of pleadings of the plaintiff/applicant contained in para no. 13 as well as prayer clause regarding relief of possession and after framing of the same to provide two effective opportunities to each of the parties to lead their respective evidence upon that issue and thereafter to decide the case afresh as per law.”

9. With the consent of the learned counsel representing the parties, the present appeal has been taken up for final disposal.

10. The learned counsel representing the appellant contends that the

First Appellate Court was not required to remit the matter back to the Trial

Court after setting aside the impugned judgment and decree. While referring

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to Order XLI Rule 25 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”), he submits that the Appellate Court can seek report from the lower Court if a particular issue ought to have been framed which was necessary for proper decision of the case. While referring to the provisions of Order XLI Rule 23 and 23A CPC, he submits that the First Appellate Court was not required to remit the matter back to the Trial Court.

11. Per contra, the learned counsel representing the respondent No.1 fairly admits that the First Appellate Court should have sought report from the Trial Court instead of remitting the matter back to the Trial Court. However, he submits that the Trial Court should have been directed to cull out the issues upon appreciation of pleadings.

12. This Court has considered the submissions. It is evident that in view of fair stand taken by the learned counsel representing respondent No.1, the issue before this Court is limited. As per Order XIV Rule 1 CPC, the Court is required to cull out the issues based upon material proposition of fact and law which is alleged by the plaintiff and is denied by the others. Each material proposition alleged by one party and denied by another, is required to be framed as a distinct issue. It is evident from the perusal of the issues already culled out that the Trial Court has failed to cull out the issues in accordance with Order XIV Rule 1 CPC. The issues are not required to be framed on the basis of the prayer made in the suit. The material propositions between the parties are the points in issue before the Court which require adjudication. The Courts are required to apply their mind while culling out the issues so as to inform the parties about the dispute

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case. However, its importance is ordinarily overlooked by the Courts.

13. In this case, the First Appellate Court should have culled out the issues in accordance with Order XIV Rule 1 CPC while requesting the Trial Court to send a report after deciding those issues. Remitting the matter back to the Trial Court to decide afresh is not envisaged unless the Court sets aside the judgment of the Trial Court on merits and re-appreciation of the case is necessary as laid down under Order XLI Rule 23A CPC.

14. Order XLI Rule 25 CPC enables the Appellate Court to frame additional issues and seek report from the lower Court.

15. Keeping in view the aforesaid facts, the order passed by the First Appellate Court is set aside to the limited extent. The First Appellate court is directed to cull out the issues in accordance with Order XIV Rule 1 CPC after examining the pleadings of the parties and request the Trial Court to allow the parties to lead their evidence and send report after adjudicating upon the aforesaid additional issues.

16. With the modifications made above, the present appeal is allowed. The parties, through their learned counsel are directed to appear before the Appellate Court on 09.12.2024.

17. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

November 25, 2024**“DK”**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No