

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

S.A. O. No. 29 of 2008

Date of decision : January 20, 2011

Piara Singh and others

....Appellants

versus

Harbhajan Singh and others

....Respondents

Coram: Hon'ble Mr. Justice L.N. Mittal

Present : Mr. DS Pheruman, Advocate, for the appellants

Mr. BS Jaswal, Advocate, for the respondents

L.N. Mittal, J. (Oral)

Respondents filed suit against appellants claiming compensation for causing injuries by appellants to respondent-plaintiff no. 1 Harbhajan Singh and to Lajwant Singh predecessor of respondents-plaintiffs no. 2 and 3. Trial court vide judgment and decree dated 11.1.2007 dismissed the suit. Plaintiffs-respondents preferred first appeal against judgment and decree of the trial court. Learned Additional District Judge, Amritsar vide judgment dated 22.7.2008 has remanded the suit to trial court for fresh decision. The said judgment is under challenge in the instant second appeal from order preferred by the defendants.

I have heard learned counsel for the parties and perused the case file.

Defendants were prosecuted for causing injuries to Harbhajan Singh and Lajwant Singh pursuant to challan presented by police. Wife of defendant-appellant no. 1 filed criminal complaint against Harbhajan Singh plaintiff no. 1, Lajwant Singh predecessor of plaintiffs no. 2 and 3 and Bhagwant Singh. They were acquitted in the said criminal complaint. Learned trial court proceeded on the erroneous assumption that plaintiffs were claiming damages for their malicious prosecution and since necessary ingredients of malicious prosecution were not proved the trial court non-suited the plaintiffs and dismissed their suit. Learned lower appellate court in these circumstances observed that since the trial court has proceeded on the wrong assumption that it was case of claiming damages for malicious prosecution, the case is required to be remanded to the trial court for deciding afresh by recording finding under issue no. 1 regarding infliction of injuries by defendants to Harbhajan Singh and Lajwant Singh and if so to entitlement of damages or compensation by the plaintiffs from the defendants because finding on this issue has not been recorded by the trial court.

Learned counsel for the appellants vehemently contended that the case is not covered by Rule 23 or Rule 23-A of the Code of Civil Procedure (in short, CPC) and therefore, the lower appellate court could not have been remanded the suit to the trial court for fresh decision. Reliance in support of this contention has been placed on judgment of Hon'ble Supreme Court in **Ashwinkumar K. Patel versus Upendra J. Patel and others, AIR 1999 SC 1125** wherein referring to Order 41 Rule 23 CPC it was held that High Court should not ordinarily exercise this power merely because in its view reasoning of lower court was wrong in some respects.

Learned counsel for the appellants also cited **P. Purushottam Reddy & Anr. vs. M/s Pratap Steels Ltd., 2002(1) Apex Court Judgments 379** wherein it was observed that appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23-A or Rule 25 of Order 41 CPC.

On the other hand, learned counsel for the respondents contended that the trial court failed to record its finding on issue no. 1 and proceeded on wrong assumption that it was a case of malicious prosecution and therefore, the suit has been rightly remanded for fresh decision.

I have carefully considered the rival contentions. The case is not covered by Order 41 Rule 23 CPC which enables the appellate court to remand the case if the case has been disposed of on preliminary issue. The case is also not covered under Order 41 Rule 25 CPC under which appellate court may frame additional issues if necessary and may refer the case to trial court for recording additional evidence and for recording findings on the additional issues so framed. However, the case may to some extent fall under Order 41 Rule 23-A which provides that even if the trial court has disposed of the case otherwise than on a preliminary issue, the appellate court may remand the case if the decree is reversed in appeal and a retrial is considered necessary. In the instant case, there is to be no complete retrial because evidence has already been led by the parties. Only fresh finding is to be recorded by the trial court on the basis of the evidence already led after granting opportunity of hearing to both the parties.

The question to be determined is whether there was sufficient ground for lower appellate court to remand the suit to the trial court for fresh decision. The answer to the question is to be in the affirmative. As

already noticed hereinbefore, the plaintiffs claimed damages on account of injuries allegedly caused by the defendants to Harbhajan Singh and Lajwant Singh predecessor of plaintiffs no. 2 and 3 but the trial court proceeded on the erroneous assumption that plaintiffs were claiming damages for their malicious prosecution. In this view of the matter, the trial court did not record any finding of fact on the controversy involved in the main issue no. 1 framed in the suit. The trial court has not recorded any finding as to whether defendants caused injuries to Lajwant Singh and Harbhajan Singh and if so whether the plaintiffs are entitled to compensation and if so, how much and from whom. Since no finding has been recorded by the trial court on this material issue, lower appellate court was fully justified in remanding suit to the trial court for fresh decision. In this view, I am supported by judgment of Hon'ble Supreme Court in the case of **P.Purushottam Reddy** (supra) relied by learned counsel for the appellants himself. Following observations of Hon'ble Supreme Court in paragraph 8 of the judgments are very relevant:-

“It is only in exceptional cases where the court may now exercise the power of remand de hors the Rules 23 and 23A. To wit, the superior court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required only Order 20 Rule 3 or Order 41 Rule 31 of the CPC and hence it is no judgment in the eye of law, it may set aside the same and send the matter back for re-writing the judgment so as to protect valuable rights to the parties. An appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23A or Rule 25 of the CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and therefore, must be avoided.”

The instant case certainly falls in the category of exceptional cases envisaged in the aforesaid observation. The judgment of the trial court did not dispose of the case satisfactorily as is manifest from the very fact that the trial court took it as a case of malicious prosecution of the plaintiffs whereas it was a case claiming compensation for injuries caused to plaintiff no. 1 and predecessor of plaintiffs no. 2 and 3. The judgment of the trial court was, thus, not satisfactory at all and therefore, the matter has been rightly remanded to the trial court for fresh decision.

For the reasons aforesaid, I find no illegality or perversity in the impugned judgment of the lower appellate court so as to warrant interference in the instant second appeal from order. Accordingly, the appeal is found to be bereft of any merit and is, therefore, dismissed.

Interim order passed in this appeal automatically stands vacated. Since there has already been long delay on account of pendency of this appeal, the trial court is directed to dispose of the suit as expeditiously as possible and preferably within two months from the date of receipt of certified copy of this order.

January 20, 2011
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(L.N. Mittal)
Judge