



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 58 of 2016 (O&M)

Date of Decision: 28.02.2025

Piara Singh

... Appellant(s)

Versus

Market Committee, Phillaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Kamaljit Singh Dhillon, Advocate
for the appellant(s).

Mr. Vikas Singh, Advocate
for respondent No.1.

Mr. Anil Bansal, Deputy Advocate General,
Punjab, for respondent No.2.

Anil Kshetarpal, J.

1. The defendant No.1 assails the correctness of the First Appellate Court's order remitting the matter back to the Trial Court for fresh decision after permitting the parties to lead evidence.

2. The relevant facts are required to be noticed to understand the controversy involved in the present case. The Market Committee of Punjab Raj Mandi Board, Phillaur, an instrumentality of the State (hereinafter referred to as "the Market Committee") filed a suit for declaration to the effect that it is the owner in possession of the property measuring 9 marlas comprised in rectangle No. 39, khasra No. 2/2 (0-6) and 17/2 (0-3), located in the area of village Apra, Tehsil Phillaur, District Jalandhar, after declaring

that the mutation No. 9792 is illegal, null and void. The plaintiff claims that

the suit property was acquired by the department and the same was transferred to the Department of Colonization and the Provincial Government became owner of the property. The plaintiff is in possession of the suit property and is running Grain Market. However, the defendant, by concealing the true facts, have got some orders from the Director, Consolidation and transferred the suit land in favour of the defendants No.1 to 3 in connivance with the officials.

3. The suit was contested by the defendants No.1 and 2 on the ground that the Civil Court has no jurisdiction and the previous suit filed by them was decreed on 08.03.2006. The defendants also claimed that the then Consolidation Officer, Jalandhar, vide order dated 08.10.1999, declared the defendants to be the owners in possession of the suit property. The Trial Court has culled out the following issues:-

- “1. Whether the plaintiff is entitled for declaration to the effect that the plaintiff is the owner in possession of property, as mentioned in the head-note of plaint, as prayed for? OPP*
- 2. Whether the plaintiff has got no locus-standi to file the present suit? OPD*
- 3. Whether present suit is hit by principle of resjudicata? OPD*
- 3A. Whether present suit is time barred? OPD*
- 4. Relief.”*

4. The suit was dismissed on 20.07.2013 forcing the plaintiff to file an appeal. The First Appellate Court, upon re-appreciation of the

evidence, came to the conclusion that the proper issues have not been framed. Hence, the First Appellate Court proceeded to frame the following additional issues:-

“1-A. Whether Provincial Govt. has acquired the suit property, if so, its effect? OPP

1-B Whether the Director Consolidation of Holdings Punjab passed the order dated 8.10.1999, if so, its effect? OPP”

5. With regard to the procedure adopted by the Trial Court, the First Appellate Court re-examined the record and made the following observations:-

“15. Now coming to the point of proceeding exparte against defendant no.4. This court has gone through the record of the trial court. Defendant no.4 had filed written statement and was duly represented by the Govt. Pleader. Order dated 15.5.2013 passed by the learned trial court transpires that the case was fixed for evidence of defendants. On that day, Govt. Pleader appeared on behalf of defendant no.4. The case was again adjourned for 18.5.2013 and 22.5.2013 for evidence of defendants. On both these dates, defendant no.4 was represented by learned Govt. Pleader but on next date 25.5.2013, it is mentioned that defendants no.3 and 4 are exparte. There is no order when defendant no.4 was proceeded against exparte. It is wrongly mentioned that defendant no.4 is exparte. Thereafter, in the subsequent order, defendant no.4 was shown as proceeded against exparte and arguments were heard

in the absence of defendant no.4. Even in the judgment, defendants no.3 and 4 have been shown as exparte. This is a glaring mistake on the record. It also establishes that defendant no.4 was not afforded adequate opportunity to lead evidence; rather this defendant was wrongly and illegally shown as exparte by the learned trial court in its order dated 25.5.2013 which continued till delivery of the judgment. To the mind of this court, defendant no.4 has been gravely prejudiced and it occasioned failure of justice by not affording defendant no.4 adequate opportunity to lead evidence and by showing this defendant as exparte.

16. *This court is of the considered opinion that findings of the learned trial court are not sustainable as defendant no.4 was not afforded adequate opportunity of being heard. Apart from it, additional issues have been framed as aforesaid and there is possibility that if evidence is led on the additional issues, it will effect the merits of the case. Keeping in view the totality of the facts and circumstances of the case, this court is of the considered opinion that it is a fit case where judgment and decree be set aside and case be remanded to trial court under the provisions of order 41 Rule 23A CPC for deciding the same afresh after affording defendant no.4 adequate opportunity to lead evidence.”*

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

7. The learned counsel representing the appellant has made the following submissions:-

- I) The issues framed by the Trial Court are comprehensive and there was no requirement to frame additional issues.
- II) The defendant No.4 is the Consolidation Department and therefore, no opportunity is to be granted to the department to contest the case. He submits that the Consolidation Department is not the necessary party.
- III) The original suit was not filed within the prescribed period of limitation which cannot be condoned.

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

9. It is evident that the Trial Court has framed issue No.1 on the basis of the prayer made in the plaint. It is not in accordance with the Order XIV of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”). The issues are required to be framed on the basis of point in issue between the parties. The material proposition of fact and law which are asserted by one party but denied by another are required to form a distinct issue. In fact, a wrong practice has been started by the Courts to cull out the issues on the basis of prayer.

10. The additional issues which have been framed by the First Appellate Court are real and substantive issues which would require adjudication in this case.

11. It may be noted that the defendants No.1 to 3 are relying upon the order passed by the Director, Consolidation. The plaintiff claims that the

aforesaid order is a result of collusion between the officials and the defendants No.1 to 3. In these circumstances, it is necessary to go to the root of the matter. An instrumentality of the State has come to the Court for redressal of its grievance. In such circumstances, the Court has to be more careful in dealing with the disputes when the public property is involved.

12. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned judgment passed by the First Appellate Court. Hence, the present appeal is dismissed.

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

(Anil Kshetarpal)
Judge

February 28, 2025
“DK”

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