

(1984) 05 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : First Appeal from Order No. 63 of 1984

Amar Singh

APPELLANT

Vs

Kehar Singh

RESPONDENT

Date of Decision : 31-05-1984

Acts Referred:

Citation : (1984) 13 ILR HP 266

Hon'ble Judges : P.D. Desai, C.J

Bench : Single Bench

Advocate : S.S. Kanwar, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Allowed

Judgement

P.D. Desai, C.J.—Admit. To be heard today.

2. Mr. K.D. Sood waives service of the notice.

3. The Appellant is the Defendant and the Respondent is the Plaintiff. The suit was instituted for a declaration that the Respondent was the owner of the suit land on the strength of a conveyance executed in his favour in 1973 and for a permanent injunction restraining the Appellant from getting a mutation affected in his favour in respect Of the suit land. The trial court dismissed the suit holding that the Respondent had failed to establish his title to the suit land. In appeal, the lower appellate court reversed the decree of the trial court and remanded the suit for a fresh trial after allowing an amendment of the plaint which was applied for at the appellate stage by the Respondent. Hence the present appeal.

4. Mr. S.S. Kanwar, challenged the decision of the lower appellate court on two grounds. First, the amendment was wrongly allowed and, secondly, even if it is found that the order allowing amendment was legal and proper, the decree passed by the trial court could not have been set aside and the proper course was to have framed issue(s) arising out of the amended pleadings and to send down the issue(s) for trial to the trial court, if necessary.

5. I am not inclined to accept the first submission made on behalf of the Appellant. The law as regards granting of amendment is well settled. No amendment would be disallowed which is necessary for determining the real issue in controversy between the parties and the grant of which would not cause an injury to the other party which cannot be compensated in terms of money. Both these tests are satisfied in the instant case. Hence I see no reason to interfere with the discretion exercised by the lower appellate court in the matter of the grant of amendment.

6. So far as the second submission is concerned, however, the Appellant is on a stronger ground. After allowing the amendment, the proper course which the lower appellate court ought to have adopted was to permit the Appellant to file an additional written statement and then to raise additional points for determination arising out of the amended/subsequent pleadings. If the evidence upon the record was sufficient to enable the lower appellate court to pronounce judgment on the points arising out of the amended/subsequent pleadings, then, the lower appellate court ought to have proceeded to hear and decide the appeal. In case, however, the evidence upon the record was insufficient to enable it to pronounce judgment on the points for determination arising out of the amended/subsequent pleadings, the lower appellate court ought to have taken such evidence itself, or it should have framed the relevant issue(s) and referred the same for trial to the trial court with a direction to take additional evidence required and to return the evidence together with its findings thereon and the reasons therefore within a fixed time. The lower appellate court ought to have then proceeded to heard and decide the appeal. Except for good, cogent and sufficient reasons recorded in writing, the lower appellate court ought not to have chosen to depart from the above course of action. No such reasons are apparent even otherwise on the record of the case. Be it remembered that to set aside the decree and to remand the suit for trial afresh on all issues would not only involve re-litigation of the same issues which were earlier tried and decided upon by the trial court, at much cost and inconvenience to the parties, but also waste of public time and money.

7. Under the circumstances, the appeal is allowed and the impugned decision is quashed and set aside. The case is remanded to the lower appellate court with a direction to readmit the appeal on the file and to deal with and dispose it of in accordance with law and in light of the observations made in the course of this judgment. No costs.