
(1978) 11 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal from Order No. 51 of 1975

Bachan Dass and another

APPELLANT

Vs

Thakurdwara Mai Ass Kaur, Patiala

RESPONDENT

Date of Decision : 20-11-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23

Citation : (1978) 11 P&H CK 0003

Hon'ble Judges : S.S. Dewan, J

Bench : Single Bench

Advocate : K.C. Puri, for the Appellant; R.K. Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dewan, J.—This second appeal by the defendants is directed against the order of remand passed by the Additional District Judge. Patiala, setting aside the judgment and decree passed by the Additional Sub Judge 2nd Class of that place and while remanding this case, the trial Judge was directed to give reasonable opportunity to the parties to lead evidence on the issues framed in the case and then decide the case afresh on merits. A preliminary objection has been raised that no appeal lies as the order of refund passed by the lower appellate Court is one under the inherent powers of the Court and not under rule 23 of Order 41 of the Code of Civil Procedure. I have heard the appellants' counsel at length and I am of opinion that the preliminary objection has force and must be allowed. In order to determine this objection, a few preliminary facts may be stated.

2. Thakurdwara Mai Ass Kaur situated in the Anaj Mandi, Patiala, through its Mohtmim Mahant Raghunandan Dass Chela Mahant Radhika Dass brought a suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the property as detailed in the caption of the plaint. It was pleaded by the plaintiff that he being the Mohtmim Mahant of the Dera owned a room in dispute at Patiala and also the land in dispute situated at village

Bishangarh Phirwai in District Bhatinda and that the defendants, namely Bachan Dass and Charan Dass, had taken illegal possession of that property. The suit was hotly contested by the defendants who raised a preliminary objection that the civil Courts at Patiala had no jurisdiction to hear the suit as the land in suit was situated at village Kishangarh Phirwai, Tehsil Mansa, District Bhatinda. It was also pleaded by them that the room in dispute had no concern with the land and that the possession of the same was also with the plaintiff. Some other objections were also taken by the defendants. The pleadings of the parties gave rise to the following issues :--

1. Whether the civil Court at Patiala has no jurisdiction to try the suit ?
2. Whether the suit is properly valued for purposes of Court-fee and jurisdiction ?
3. Whether the land in dispute at Kishangarh Phirwai is the property of the plaintiff Thakurdwara and Raghunandan Dass alone as its Mohtmim Mahant?
4. Whether the land in suit is attached to Dera Mai Ass Kaur situated at village Kishangarh and Raghubir Daas Chela Lachhman Dass was its Mohtmim of the Thakurdwara ?
5. Whether Charan Dass defendant was appointed Mohtmim of the land in dispute after death of Raghubir Dass by Shaik and the Panchayat ?
6. Whether the plaintiff is entitled to the possession of the property in dispute?
7. Relief.

The learned Additional Sub Judge found issue No. 1 in favour of the defendants holding that the plaintiff had concocted the story that the defendants had locked the room at Patiala in order to confer jurisdiction on the civil Court at Patiala. It was held that the civil Courts at Patiala did not have the jurisdiction to try the suit and in the result the Plaint was ordered to be returned to the plaintiff for being presented in the Court of proper jurisdiction. No findings were recorded on the other issues. The plaintiff preferred an appeal against that order. The learned Additional District Judge accepted the appeal and found that the trial Court had not framed the proper issues in the case which were necessary for giving the parties a fair opportunity to produce evidence and reach to a fair conclusion in the case. He accordingly recast the issues and while remanding the case, directed the trial Court to give reasonable opportunity to the parties to lead evidence on the issues so framed and decide the case afresh on merits.

8. In my view, the appeal is not maintainable. The right of appeal is a creature of statute. Every decree is appealable and so also certain orders have been made appealable under rule 1 of Order 43, CPC. It is conceded by the learned counsel for the appellants that the order passed by the Court of appeal below is not one passed under rule 23 of Order 41 Code of Civil Procedure. Obviously, the order was passed in exercise of the inherent powers u/s 51 of the CPC and as such no appeal lies under rule 1 of Order 43 of the said Code. The learned counsel

contended that this appeal be treated as revision. In support of his contention, he has cited a case The The Reliable Water Supply Service of India Vs. Union of India (UOI) and Others, Their Lordships of the Supreme Court observed that the High Court can convert an appeal into a revision when the Court whose order is appealed against had illegally exercised its jurisdiction. This ruling has no bearing on the present case. I do not think that the lower appellate Court committed any illegality or acted with material irregularity in remanding the case in the circumstances. Accordingly, I decline to treat this appeal as a revision and hold that no appeal lies. I dismiss the appeal with costs. The interim order passed by this Court on. September 10, 1975 stands vacated.