
(2009) 08 SC CK 0087

In the Supreme Court Of India

Case No : Civil Appeal No. 5071 of 2009 (Arising out of SLP (C) No. 22845 of 2008)

Jaskaran Singh

APPELLANT

Vs

Punjab State, Ministry of Home and Others

RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2009) 9 SCC 59

Hon'ble Judges : Tarun Chatterjee, J; R. M. Lodha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Tarun Chatterjee, J.—Leave granted.

2. This appeal, by way of a Special Leave Petition, is directed against the Judgment and decree dated 10th of October, 2007 of Punjab and Haryana High Court at Chandigarh in Regular Second Appeal No. 3661 of 2001, whereby the High Court had allowed the Second Appeal and set aside the Judgment of the Appellate Court in a suit for mandatory injunction.

3. We have heard the learned Counsel for the parties and examined the impugned Judgment of the High Court as well as the trial Court and also other materials on record. In our view, the Judgment of the High Court is liable to be set aside on a very short question and the Second Appeal is to be sent back to the High Court for fresh disposal in the light of the observations made herein below:

On a plain reading of the Judgment of the High Court, we find that the High Court, without framing the substantial questions of law, allowed the second appeal and reversed the Judgment of the Appellate Court, which had set aside the Judgment of the trial Court dismissing the suit for permanent injunction. It is now well settled by catena of decisions of this Court that the High Court in

Second Appeal, before allowing the same, ought to have framed the substantial questions of law arising between the parties and only thereafter, to decide the appeal on consideration of such questions of law.

4. In this appeal, admittedly, the second appeal was allowed without formulating any substantial questions of law as required mandatorily u/s 100 of the Code of Civil Procedure.

5. That being the position, we set aside the Judgment and decree of the High Court passed in the aforesaid second appeal and remit the appeal back to the High Court for fresh decision after formulating the substantial questions of law and thereafter to decide on merits.

6. For the reasons aforesaid, the Judgment and decree of the High Court in the second appeal is set aside. The Second Appeal is restored to its original file. The High Court is now requested to dispose of the same at an early date, preferably within six months from the date of supply of a copy of this order to it.

7. The appeal is allowed to the extent indicated above. There will be no order as to costs.