
(2018) 07 J&K CK 0037
In the Jammu And Kashmir High Court
Case No : Civil Second Appeal No.30 Of 2017

Manawar Khan And Others @APPELLANT@Hash Karam Dad Khan

Date of Decision : 07-07-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 41 Rule 31
Jammu and Kashmir Agrarian Reforms Act, 1972 — Section 19E, 25

Citation : (2018) 07 J&K CK 0037

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties on the question of admission of this Civil Second Appeal.

2. Shorn of unnecessary details, the relevant facts which are necessary for the disposal of this appeal in brief are; that the respondent herein filed a

suit for permanent prohibitory injunction against the appellants for restraining the latter from interfering into their possession over the property i.e land

measuring 04 kanals 03 marlas comprised in khasra No.269-min-II, 4 kanal 18 marlas comprised in khasra No.270-I, 3 kanals and 10 marlas

comprised in khasra No.284-I, 1 kanal 19 marlas comprised in khasra No.141-min and 1 kanal 12 marlas comprised in khasra No.260 min situated at

village Pathana Tir Tehsil Mendhar District Poonch.

3. The suit was filed by the respondent on the ground that the suit land was in his peaceful possession and was duly recorded in the revenue record.

The respondent claimed title to the property on the ground that it has been inherited by them from his forefathers. The suit was resisted by the

appellants-defendants in the suit by taking a stand that the suit property was not exclusively in possession of the respondent and that the land falling

under khasra No.269 and 270 was in possession of the respondent, whereas the land falling under survey No.284 was in possession of the appellants

i.e defendants Nos. 2 to 4 in the suit and the land measuring 1 kanal 13 marlas from the same khasra number was in possession of the appellant-

defendant No.5 as per partition which had taken place between the appellant and the respondent-cosharer.

4. On the basis of pleadings of the parties, the Trial Court framed the following issues:

i) Whether the plaintiff is the owner and in possession of the suit land ?OPP

ii) Whether the defendants 1 to 6 are interfering in the peaceful possession of the plaintiff in suit land without any legal right or sanction ? OPP

iii) In case issue No.1 is not proved in affirmative, whether the defendants are in possession of some part of the suit land.?OPD

iv) Relief .Â Â Â

5. The trial Court upon appreciation of evidence, oral as well as documentary that had come on record, came to the conclusion that the respondent

was in possession of the suit land and that the appellants were interfering in his peaceful possession without any right, title or interest and accordingly

a decree as prayed for by the respondent, was passed in favour of the respondent.

6. Feeling aggrieved, the appellants filed civil first appeal before the Court of learned District Judge, Poonch (hereinafter referred to as the First

Appellate Court). The first appellate Court after reappreciating the evidence on record and considering the rival contentions, concurred with the

findings of fact returned by the trial court and consequently upheld the judgment and decree passed by the trial Court vide its judgment dated

08.09.2017. It is this judgment and decree passed by the first Appellate Court, the appellants are aggrieved of and have assailed the same in this civil

second appeal.Â

7. The learned counsel for the appellants has formulated the following substantial questions of law for adjudication in this appeal:

i) â??Whether disposal of the first appeal without following the statutory requirement in terms of order 41 Rule 31 consequently decree deserves to be set aside.

ii) Whether the findings returned in the point of possession is perverse, if so, the

suit of the plaintiffs deserves to be dismissed.

iii) Whether the evidence can be taken into consideration qua the facts, the ground whereof has not been pleaded in the plaint.

iv) Whether the question relating to the partition of an agricultural land can be decided by the civil court.

v) Whether the failure of the plaintiffs to prove the nature of the land have pleaded oust the jurisdiction of the civil court.Â Â Â Â

vi) Whether the suit before the civil court is barred in terms of section 193 of Land Revenue Act.??

vii) Whether the trial Court is having the jurisdiction to decide the issue of possession qua the agricultural land in view of section 19-E read with

section 25 of Agrarian Reforms Act.Â

8. During the course of arguments, the learned counsel for the appellants vehemently urged that the questions of law formulated by him in paragraph

No. 17 of the memo of appeal which arise for adjudication in this appeal, are substantial questions of law, and therefore, the appeal deserves to be

admitted.Â Elaborating his arguments, the learned counsel for the appellants submits that the judgment of the First Appellate Court is not in

consonance with the provisions of Order 41 Rule 31 of the CPC which provides guidelines for the Appellate Court, as to how the court has to

proceedÂ Â and decide the case. It is submitted that the FirstÂ Appellate Court did not formulateÂ the pointsÂ for determinationÂ nor decided

such points by giving reasons . The learned counsel further submitsÂ that the appellantsÂ had taken a specific ground before the First Appellate

CourtÂ that the partition which was relied upon by the Trial CourtÂ to return the finding that the respondentÂ was in possessionÂ of the suitÂ

property, could not have been taken into considerationÂ for the reasonÂ that the partitionÂ had not taken place in accordance with the provisionsÂ

of theÂ Land Revenue Act and the partition rules framed thereunder. He, therefore, submits that the findings of fact with regard to the possession

returned by the Trial Court in favour of the respondent, are perverse which itself is a substantial question of law. Learned counsel also raisedÂ the

issue that the landÂ in question was agricultural land and, therefore, the same could not haveÂ been made subject matter of partition in suit before

the Civil Court and, therefore,Â any question relatingÂ to the partitionÂ of

agricultural landÂ could notÂ haveÂ beenÂ decided by the Trial

Court. This is sum and substance of the arguments raised by the learned counsel for the appellants to demonstrate that the appeal involves

determination of substantial questions of law.

9. I have given anxious consideration to the contention of the learned counsel appearing for the parties. It is true that in terms of Rule 31 Order 41 of

the Code of Civil Procedure, the First Appellate Court is required to formulate the points for determination in the appeal and adjudicate the same by a

decision supported by reasons. The said provision provides guidelines for the Appellate Court as to how it should proceed and decide the appeal.Â

The provision should be read in such a wayÂ as to require that the various particulars mentioned therein should be taken into consideration. From the

judgment of the Appellate Court, it is evident that the court has not only reproduced but has properly appreciated the evidence, applied its mind and

decided the same considering the material on record. It would be substantial complianceÂ of the aforesaidÂ provision, if the judgmentÂ of the

Appellate CourtÂ is based on independentÂ assessmentÂ of the relevantÂ materialÂ on record in the shape of oral and documentary evidence

and the findings of the Appellate CourtÂ are reasoned and well founded. The First Appellate Court is final court of fact and, therefore, must not

record mere general expression or concurrence with the Trial Court judgment.Â Â

10. From a bare reading of the judgment, it is clearly discernible that the Appellate Court has applied its independent mind, re- appreciated the

evidence on record and has come to the conclusion of his own and this is substantial compliance of the provision of Order 41 Rule 31 CPC. The

learned counsel for the appellant could not point out as to how the aforesaid provisions have been violated by the Appellate Court.Â The Appellate

Court in the first part of the judgment has referred to the controversy between the parties, reproduced the evidence in extenso and has re-appreciated

the same to return its own finding of fact.Â It is, however, the different matter that the Appellate Court too came to the same findings of fact as had

been returned by the Trial Court. The contention of the learned counsel for the appellants that the judgment and decree impugned is not in consonance

with the provision of Order 41 Rule 31, is devoid of any merit and hence

rejected.Â Â Â

11. The next question that has been strenuously urged by the learned counsel for the appellants that the finding of fact concurrently returned by the

Trial Court and the Ist Appellate Court areÂ perverse, is also without any substance. Both the courtsÂ Â below have returned the concurrent

findings of fact that the respondent has been proved to be in peaceful possession of the suit property. To arrive at just conclusion, both the courts

below have relied upon not only the factum of partition between the parties but also oral evidence brought on record in the shape of several witnesses

by the respondent. As a matter of fact, the witnesses of the appellants too have stated about the factum of partition between the parties. It has also

come on record that not only there was partition between the parties to the suit but the same had been duly mutated in the revenue record. The

witnesses have also spoken about the litigation between the parties with regard to the partition. The Trial Court as also the Ist Appellate Court after

considering the oral evidence as also the documentary evidence in the shape of revenue record produced by the concerned Patwari, came to be

conclusion that the respondent was in possession of the suit property and, therefore, deserved to be protected by granting decree of permanent

prohibitory injunction and restraining the appellants from interfering or causing any interference in his possession. The plea of the learned counsel for

the appellantsÂ that the partitionÂ which the witnesses of both the partiesÂ Â had been referringÂ to, was the partitionÂ not effected in

consonance with the provisionsÂ of the Land Revenue ActÂ and the partition rules framed there-under, is totally misconceivedÂ and deserves

consideration only for rejection. It may be stated that the Trial Court in the suit was not called upon to adjudicate upon the validity of the partition

effected by the revenue officer but was supposed to adjudicate on the factum of possession of the respondent over the suit property. There was

ample oral evidenceÂ before the Trial Court to returnÂ aforesaid finding.Â The oral evidence inter alia included evidence with regard to the

partition that had actually taken place between the parties, pursuant to which the parties to the partition were in possession of theirÂ respective share.

Be that as it may be, both the courts below have concurrently found that the respondent is in peaceful possession of the suit property and, therefore,

deserved to be protected. I do not find perversity in these findings which are well supported by legally admissible evidence on record.

12. In view of aforesaid discussion, it is concluded that the appeal does not involve determination of any such substantial question of law

warranting its admission. Consequently, the appeal is dismissed.