

(2014) 07 P&H CK 0586
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 675 of 2013 (O&M)

Sandip Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 80

Citation : (2014) 07 P&H CK 0586

Hon'ble Judges : Karam Chand Puri, J

Bench : Single Bench

Advocate : Rajinder Sharma, Advocate for the Appellant

Final Decision : Dismissed

Judgement

K.C. Puri, J.

CM No. 1844-C of 2013

1. There is delay of 8 days in re-filing the appeal. For the reasons mentioned in the application, the delay of 8 days in re-filing the appeal stands condoned and the application stands allowed.

Main case

Plaintiffs-appellants have directed this appeal against the judgment and decree dated 22.11.2012 passed by Sh. Kishore Kumar, Additional District Judge, Amritsar vide which the appeal preferred by the plaintiffs against the judgment and decree dated 20.1.2012 passed by Ms. Jitender Walia, Additional Civil Judge (Senior Division), Ajnala was dismissed.

2. Briefly stated, the plaintiffs filed suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the suit property. It is alleged that the suit property is ownership of Provincial Govt. and is under the possession of plaintiffs for the last more than 15 years. Suit land was uncultivable and infertile which was made fit for cultivation by the plaintiffs by

spending huge amount and labour. Earlier khasra girdawaries regarding suit property were wrongly recorded in the name of Chanan Singh and the same have been corrected in the name of plaintiffs. Chanan Singh expired and his legal heirs swore an affidavit confirming possession of the plaintiffs over suit property. Suit property is situated near Barbed Wire near Indo-Pak Border in village Dag. 77-Battalion of BSF has been posted near the suit property. The defendants are out to dispossess the plaintiffs.

3. Upon notice, the defendants appeared and filed written statement that they are in possession of the suit property. No notice u/s 80 CPC was given. The ownership of the Provincial Government was admitted. It is admitted that defendants are in possession.

4. From the pleadings of the parties following issues were framed:-

1. Whether plaintiff is entitled to permanent injunction, as prayed for in the plaint? OPP

2. Whether suit is not maintainable? OPD

3. Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD

4. Whether plaintiff has concealed material facts from the Court, if so, its effect? OPD

5. Whether plaintiff has no locus standi and cause of action to file this suit? OPD

6. Whether suit is not property valued for the purposes of Court fee and jurisdiction? OPD

7. Relief.

5. Plaintiff Rajesh Kumar examined himself as PW-1, Nazar Singh as PW-2 and closed the evidence.

6. In defence, the defendants examined Daljit Singh as DW-1, Arun Kumar as DW-2 and thereafter closed the evidence.

7. Learned trial Court after appraisal of the evidence decided issue No. 1 against the plaintiffs. Issues No. 2, 3 and 5 were decided against the plaintiffs whereas issue No. 4 and 6 were decided against the defendants. However, in view of findings on issues No. 1 to 3 and 5, the suit of the plaintiff was dismissed vide judgment and decree dated 20.1.2012 passed by Ms. Jitender Walia, Additional Civil Judge (Senior Division), Ajnala.

8. Feeling dis-satisfied with the above said judgment and decree dated 20.1.2012, the plaintiffs filed first appeal and the same was dismissed vide judgment and decree dated 22.11.2012 passed by Sh. Kishore Kumar, Additional District Judge, Amritsar.

9. Still feeling dis-satisfied with the aforesaid judgments and decrees dated

20.1.2012 and 22.11.2012, the plaintiffs appellants have preferred the present appeal.

10. The plaintiffs in paragraph No. 8 of the grounds of appeal had mentioned that following substantial questions of law have arisen:-

(i) Whether the finding of the Court below on issue No. 1 are perverse and against evidence on record?

(ii) Whether the Courts below fell in error while recording finding that in an injunction suit owner has to be impleaded as necessary party, though no injunction was prayed against the owner?

11. I have heard learned counsel for the appellants and have gone through the case file.

12. There is concurrent finding recorded by both the Courts below that the plaintiffs were not in possession of the suit property and BSF is in possession of the suit property. That being a finding of fact does not call for any interference in view of Section 100 CPC. There is nothing on the file that said findings are against the evidence on the record.

13. Admittedly, the Provincial Govt. is owner of the suit property. The BSF is in possession of the suit property so, the plaintiffs are neither owner nor in possession of the suit property and as such both the Courts below have rightly dismissed their suit.

14. So, I have no hesitation in holding that no question of law much less a substantial question of law has arisen. The questions raised by the appellants are not the questions of law. Consequently, the appeal is without merit and the same stands dismissed.