
(1973) 10 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal from Order No. 25 of 1972

Surjit Singh and others

APPELLANT

Vs

Bhag Singh and others

RESPONDENT

Date of Decision : 19-10-1973

Acts Referred:

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

Citation : (1973) 10 P&H CK 0002

Hon'ble Judges : C.G. Suri, J

Bench : Single Bench

Advocate : Harbans Lal, for the Appellant;

Final Decision : Allowed

Judgement

C.G. Suri, J.—This second appeal against an order of the lower appellate Court, remanding the case, apparently, under order XLI Rule 23-A of the Code of Civil Procedure, to the Court of first instance for retrial has been filed by some of the defendants under the following circumstances:--

2. Bhag Singh, plaintiff-respondent No. 1, had filed this suit for possession of agricultural land under the Punjab Customary Law alleging that his deceased brother Harchand Singh had sold this ancestral land to the appellants, predecessors in-interest without consideration and necessity and that the sale was not binding on him (Bhag Singh plaintiff) after the life time of the vendor. The suit had been dismissed with costs by the trial Court on the ground that the vendor's mother Bishan Kaur was the eligible heir in preference to the brother of the deceased and that the plaintiff had no locus standi to file the suit for possession in his mother's life time. The plaintiff-respondent was found to have failed to prove his plea that his mother had renounced the world and was to be taken to be civilly dead. The trial Court had, however, framed all the issues arising from the pleadings of the parties and had given its decisions thereon.

3. When the plaintiff's appeal came up for hearing in the lower appellate Court,

it was observed that the documents had not been endorsed with the particulars mentioned in Rule 4 of Order XIII of the Code and that the requirements of the rule had not been complied, with. The observations of the learned Court of first appeal that it was not possible to know if the trial Court had taken into consideration these documents in arriving at its decision may however, appear to be against the record. The trial Court has referred to and considered most of these documents while discussing the evidence under issue No. 8 relating to the consideration and necessity for the sale. The grounds given by the lower appellate Court for reopening the whole trial on all the issues in the Court of first instance may, therefore, appear to be erroneous. There was no justification for directing retrial when the trial Court's compliance with the provisions of Order XIII Rule 4 could be secured by calling a report and making a remand under XLI Rule 25 of the Code. The practice of showing an appeal as disposed of for statistical purpose has been deprecated by this Court in a number of rulings. The learned Senior Sub Judge, Sangrur may appear to have succumbed to the same weakness in the present case. There was no justification for putting the parties to the expense and botheration of a full dregs retrial when the ends of justice could be met by calling the report of the trial court.

4. I, therefore, accept this appeal and set aside the order of remand passed by the lower appellate Court. The first appeal should be restored to the file of the Senior Sub Judge at Sangrur and should be disposed of after securing compliance with the provisions of Order XIII Rule 4, Civil Procedure Code, in the manner suggested above. The costs of this appeal shall abide the final event.