
(2004) 05 P&H CK 0117

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 793 of 1980

Teka (Died) through Lrs.

APPELLANT

Vs

Ram Phal and Others

RESPONDENT

Date of Decision : 05-05-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 97

Citation : (2004) 138 PLR 602 : (2004) 3 RCR(Civil) 681

Hon'ble Judges : N.K. Sud, J

Bench : Single Bench

Advocate : S.C. Kapoor and Ashish Kapoor, Sanjeev Walia, for the Appellant;
Sanjay Vij, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sud, J.—This Regular Second Appeal is directed against the judgment and decree dated 11.1.1980 passed by the Additional District Judge, Rohtak, whereby appeal filed by the defendant-respondents against the judgment and decree dated 11.1.1979 has been allowed and the suit of the plaintiff-appellant dismissed.

2. The plaintiff-appellant filed a suit for partition of the abadi land against the defendants under Order 1, Rule 8, Code of Civil Procedure. The defendants filed a written statement admitting the claim of the plaintiff. Accordingly, a preliminary decree for partition of the suit land was passed on 8.12.1967 and Shri Ram Sarup, retired Patwari, was appointed Local Commissioner to effect partition according to the preliminary decree. The preliminary decree was not challenged by any one and has, thus, become final.

3. The Local Commissioner, after effecting partition of the suit land, submitted his report against which objections were invited. Several persons filed objections on the basis of which issues were framed and the objection petition was fixed for evidence of the objectors on 16.12.1978. No objector was present on that date in

support of the objections. Accordingly, the objection petition was dismissed for non-prosecution. Ultimately, final decree was passed on 11.1.1979 by the Sub Judge 1st Class, Rohtak, in accordance with the report of the Local Commissioner.

4. Aggrieved by the said decree, the defendant-respondents filed an appeal before the Additional District Judge, Rohtak. The grievance projected in the appeal was that the objections had wrongly been rejected. During the course of appellate proceedings, the plaintiff-appellant raised the question of limitation and prayed that the appeal was liable to be dismissed being barred by time. The lower Appellate Court duly noticed the ground about wrongful rejection of the objection raised by the plaintiff-appellant about the appeal being barred by time, yet no finding on these two issues was recorded. On the other hand, it went into the question as to whether the land in dispute could be partitioned or not. Relying on the provisions of Section 2(g)(4a) of the Punjab Village Common Lands (Regulation) Act, 1961, it recorded a finding that the land in question vested in the Gram Panchayat and, therefore, the suit for partition of the village abadi at the instance of the proprietors was not maintainable. Accordingly, the suit of the plaintiff was dismissed on this sole ground.

5. Mr. Walia, learned counsel for the appellant contends that the lower Appellate Court by recording a finding about ownership of the land had, in fact, set aside the preliminary decree dated 8.12.1967 which had become final as no appeal against the said preliminary decree had been filed by any person. For this purpose, he placed reliance on Section 97 of the CPC and also on the judgment of the Supreme Court in Venkata Reddi and Others Vs. Pothi Reddi, . He also submitted that the lower Appellate Court ought to have dismissed the appeal on the ground of limitation also which issue has been left undecided by it.

6. Counsel for the defendant-respondents, on the other hand, supports the order of the lower Appellate Court.

7. I have heard the counsel for the parties and perused the judgments and decrees of the Courts below.

8. Section 97 of the Code of Civil Procedure, reads as under:-

"97. Appeal from final decree where no appeal from preliminary decree. Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree."

9. A plain reading of the above clearly shows that where no appeal from preliminary decree has been preferred by any party aggrieved by it, the correctness of the same cannot be challenged in any appeal which may be preferred from the final decree. In the present case, it is the admitted position that no appeal had been filed by any one against the preliminary decree, dated 8.12.1967 which has, therefore, become final. The judgment of the Supreme

Court in Venkata Reddy's case (supra) also supports this view. The lower Appellate Court was, therefore, not justified in going into the questions which stood settled in the preliminary decree. It has been rightly contended by the counsel for the appellant that the lower Appellate Court ought to have recorded its finding on the ground of limitation raised before it. The lower Appellate Court has again not gone into the only question raised by the defendants, who had filed the objections against the report of the Local Commissioner, that there objections had been wrongly rejected on erroneous grounds, although it has noticed the contention raised in this regard.

10. In view of the above, I am satisfied that the judgment of the lower Appellate Court dated 11.1.1980 cannot be sustained. Accordingly, the same is set aside. The lower Appellate Court is directed to decide the appeal afresh, keeping in view the observations made above. It is once again clarified that the lower Appellate Court is not competent to go into the questions which stand settled in the preliminary decree dated 8.12.1967, which has since become final. Since the matter is very old, the parties, through their counsel, are directed to appear before the District Judge, Rohtak, for further proceedings in the appeal on 7.6.2004. It is hoped that the District Judge will deal with the matter expeditiously.

The appeal is accordingly, allowed in the above terms. No costs.