

(2009) 05 P&H CK 0076

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Harmndeep Singh

APPELLANT

Vs

Swaran Singh and
Others

RESPONDENT

Date of Decision: May 27, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151, 96
- Hindu Succession Act, 1956 - Section 15

Citation: (2010) 1 CivCC 797 : (2009) 155 PLR 642 : (2010) 1 RCR(Civil) 443

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vinod K. Sharma, J.

C.M. No. 6523 of 2009

1. This application u/s 151 of the CPC has been moved on behalf of the applicant/appellant for placing on record the documents Annexures P-1 & P-2.

In absence of an application under Order 41 Rule 27 of CPC making out a case for leading additional evidence, there is no provision under law by which the documents can be placed on record in regular second appeal.

The application is dismissed being not competent.

C.M. No. 6524 of 2009 This miscellaneous petition under Volume 5 Chapter I Part C Rule 2 of the Punjab and Haryana High Court Rules and Orders read with Order 22 Rule 10 and Order 1 Rule 10 of the Code of Civil Procedure, has been moved for impleading the applicant as appellant in the aforesaid appeal, and seeking grant of leave to file regular second appeal against the judgment and decree dated 2.4.2009

of the learned Addl. District Judge, Sangrur.

2. It is pleaded in the application, that the land in dispute was self acquired property of late Smt. Paramjit Kaur mother of respondents No. 1 to 3 and wife of respondent No. 4. The mutation of inheritance was sanctioned in favour of respondents No. 1 to 4 in equal shares being Class-1 heirs. The legality of mutation was challenged by respondents No. 1 to 3 regarding land measuring 4 Bighas 1 Biswa sanctioned in favour of respondent No. 4 by filing a civil suit. The suit was dismissed on 16.2.2006. During the pendency of the aforesaid civil suit respondent No. 4 sold 4 bighas 1 biswa of land to one Norang Singh on 26.4.2004, who sold the land to appellant on 27.5.2004.

3. The applicant claimed, that he had no knowledge of pendency of civil suit. As already observed above, the suit was dismissed on 16.2.2006. An appeal was filed by respondents No. 1 to 3. The applicant/appellant on coming to know about the proceedings filed an application under Order 1 Rule 10 of the Code of Civil Procedure, for being impleading as respondent in the appeal then pending before the learned lower appellate Court. The said application was dismissed.

4. The appeal was allowed on 2.4.2009, on the basis of compromise arrived at between the parties. The applicant-appellant by claiming himself to be the assignee claimed, that he was entitled to be impleaded as respondent in the said appeal.

5. The applicant-appellant further claimed, that he was adversely affected by the judgment and decree dated 2.4.2009, and on the pleadings, referred to above, this application has been moved for permitting the applicant-appellant to be impleaded as a party and also for permission to file the regular second appeal.

6. In order to appreciate the rights of the applicant-appellant it would be necessary to see the judgment and decree being impugned in this appeal. The Addl. District Judge, Sangrur by way of impugned judgment and decree has decreed the suit on the basis of compromise dated 2.4.2009 effected between the parties.

7. The application moved by the applicant-appellant under Order 1 Rule 10 of the CPC was dismissed by holding, that the applicant-appellant having purchased the land during the pendency of the appeal could not claim himself to be bona fide purchaser for consideration, as purchase by the applicant-appellant was hit by the principle of lis pendens. However, the learned lower appellate Court protected the rights of the applicant-appellant by permitting him to file an independent suit. 8. In support of the application, reliance was placed on Volume 5 Chapter U Part C Rule 2 of the Punjab & Haryana High Court Rules and Orders, which reads as under:

2. Appeals by persons other than parties to the decree or order appealed from.-

Whenever by a decree or order which is appealable to the High Court the interest of

- (a) a beneficiary in property which at the date of such decree or order was vested in or in the possession of a trustee, an executor, an administrator, or a receiver or manager appointed by a court who as such was a party to such decree order, or
- (b) a legal representative as such of a deceased party to such decree or order, or
- (c) an assignee of a party to such decree or order By assignment subsequent to the date of such decree or order; or
- (d) a person whose interest arose after the date of such decree or order by reason of any creation or devolution of interest, by, through, or from any party to such decree or order is affected;

and such beneficiary, legal representative, assignee, or person was not or has not been made a party to such decree or order or to proceedings thereunder or thereon and desires to present to the High Court for admission a memorandum of appeal from such decree or order, he may name himself therein as an appellant if at the time when he presents such memorandum of appeal for admission he along with such memorandum of appeal presents an application for leave to make himself an appellant, and, except as hereinafter provided, an affidavit stating such facts as may be necessary in support of his application:

Provided always, that a Judge of the High Court may, by an order allow in his discretion a reasonable time in that behalf for the presentation of such an affidavit, if it appears to him that the applicant could not by the exercise of due diligence have procured such affidavit in time for presentation along with the memorandum of appeal.

9. The bare reading of the rule would show, that this application is not maintainable as pre-requisite for moving an application is, that the decree or order should be appealable to the High Court.

10. The compromise decree passed by the learned lower appellate Court is not appealable in view of the bar contained u/s 96(3) of the Code of Civil Procedure. Hence, the application being not maintainable is ordered to be dismissed.

11. This regular second appeal is directed against the judgment and decree dated 2.4.2009, passed by the learned lower appellate Court, vide which appeal filed by respondents No. 1 to 3 stands decreed on the basis of compromise.

12. As observed, while disposing of CM. No. 6524-C of 2009, this regular second appeal against the judgment and decree is not competent in view of the bar u/s 96(3) of the Code of Civil Procedure.

13. Mr. H.N. Mehtani, learned Counsel for the appellant, however, challenged the order dated 5.1.2009 vide which the application moved by the applicant-appellant under Order 1 Rule 10 of the CPC was ordered to be dismissed.

14. The Court dismissed the application, keeping in view the fact, that the compromise was arrived at by the parties in an appeal, but the learned lower appellate Court instead of decreeing the suit on the basis of compromise had dismissed the appeal.

15. Swaran Singh and Ors. filed a revision petition and the Hon"ble High Court was pleased to remand the case for passing fresh orders. It was at that stage, that the application was moved under Order 1 Rule 10 of the Code of Civil Procedure. The applicant-appellant claimed himself to be bona fide purchaser, thus, interested in the suit.

16. However, the learned lower appellate Court dismissed the application by holding, that the applicant-appellant was not entitled to claim relief being bona fide purchaser as the purchase was made during the pendency of the appeal. As observed earlier, the right to file fresh suit was protected. The order dismissing an application under Order 1 Rule 10 of the CPC is again not appealable.

17. Even otherwise in the grounds of appeal the challenge is to the consent decree passed by the learned lower appellate Court.

18. Mr. H.N. Mehtani learned Counsel appearing on behalf of the appellant has placed reliance on the judgment of the Hon"ble Supreme Court in the case of [Amit Kumar Shaw and Another Vs. Farida Khatoon and Another](#), to contend, that in application of transferee pendente lite for impleading him a party to the suit should ordinarily be allowed. The Hon"ble Supreme Court was further pleased to hold that transferee pendente lite can be impleaded as a party in pending regular second appeal.

19. Reliance was finally placed on the judgment of the Hon"ble Allahabad High Court in the case of Gulab Chand Chaurasiya v. Ram Sewak and Ors. 1990 CCC 235 (All) wherein again it has been laid down, that transferee lis pendens can be substituted and there is no limitation prescribed for moving such application.

20. Reliance was also placed on the judgment of the Hon"ble Allahabad High Court in the case of Satyadeo Tiwai v. Smt. Chandrawati Devi Loklka and Ors. 1997(2) CCC 192 (All) wherein again the Hon"ble Allahabad High Court has been pleased to lay down, that purchaser can be impleaded as a party in the pending appeal.

21. Reliance was also placed on the judgment of this Court in the case of Om Parkash v. Smt. Usha Godara and Ors. 1989 P.L.J. 194 wherein again it was laid down, that vendee/defendant during the pendency of the suit is to be impleaded as defendant under Order 22 Rule 10 of the CPC.

22. The reliance was also placed on the judgment of this Court in the case of Daldev Singh and Ors. v. Rajinder Kumar and Ors. (2007)145 P.L.R. 458 wherein again this Court has been pleased to lay down, that the subsequent purchaser during pending litigation is entitled to be impleaded as a party.

23. There can be no dispute with the proposition canvassed by the learned Counsel for the applicant-appellant. However, it has to be noticed, that the order rejecting the application moved by the applicant-appellant for being impleaded as a party was not challenged by the applicant-appellant and no regular second appeal is competent against an order, as appeal is competent only against a decree.

24. The judgment and decree passed by the learned lower appellate Court was on the basis of compromise, which is again not appealable. The prerequisite for permitting the assignee to file an appeal in this Court, the judgment/decreed should be appealable to the High Court. Once it is proved, that the decree is not appealable, the application or the appeal filed by the applicant-appellant cannot be entertained.

25. The applicant-appellant has raised the following substantial questions of law in this appeal:

1. Whether when the interest in the subject matter of the suit had devolved upon the appellant during the pendency of the proceedings arising from the civil suit tiled by respondent No. 1 to 3, has the learned Addl. District Judge not erred in law in not impleading the appellant as respondent in the appeal and perning him to defend his interest?

2. Whether the land in dispute was the self acquired property of late Smt. Paramjit Kaur and after her death the plaintiffs, her sons/daughters and her husband all being Class-1 legal heirs u/s 15(i)(a) of the Hindu Succession Act became owners of the suit property in equal shares and there being no dispute in the aforesaid legal situation, has the learned first appellate Court not erred in law in allowing the appeal filed by respondents No. 1 to 3 and setting aside the judgment and decree of the learned Civil Judge?

3. Whether when respondent No. 4 had already transferred his interest in the land in dispute would the alleged compromise entered into between respondents No. 1 to 3 and respondent No. 4, fall within the purview of Order 23 Rule 3 CPC particularly when the aforesaid fact had been brought to the notice of the first appellate Court in the application filed under Order 1 Rule 10 CPC by the appellant?

4. Whether when under the law, the learned first appellate Court was required to record its satisfaction that the suit has been adjusted wholly or in part by any lawful agreement and compromise and no such satisfaction has been recorded, is the judgment and decree of the learned first appellate Court in allowing the appeal filed by respondents No. 1 to 3 on the ground of compromise not erroneous and without jurisdiction?

5. Whether when respondent No. 4 had already transferred his interest in the land in dispute and ceased to be its owner and there was no question of there being any adjustment of the suit wholly or in part by any lawful agreement or compromise has the learned appellate Court not committed an error of jurisdiction in setting aside

the well considered judgment and decree of the learned Civil Judge which was wholly in accordance with law?

6. Whether when the interest in the land in dispute had devolved upon the appellant, during the pendency of the proceedings arising from the Civil suit filed by respondents No. 1 to 3 and he is aggrieved and adversely affected from the judgment and the decree dated 2.4.2009 of the learned Addl. District Judge, is he not competent to file the present second appeal challenging the judgment and decree"of the learned Addl. District Judge, Sangrur dated 2.4.2009?

26. Neither any argument on these substantial questions of law was addressed, nor these arise as the application moved by the applicant-appellant stands dismissed, even otherwise the appeal against consent decree is barred u/s 96(3) of the Code of Civil Procedure.

Therefore, finding no merit, this appeal is also ordered to be dismissed in limine.