
(1994) 05 P&H CK 0012

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2941 of 1988

Anokh Singh

APPELLANT

Vs

Surjit Singh

RESPONDENT

Date of Decision: May 18, 1994

Citation: (1995) 109 PLR 68

Hon'ble Judges: H.S. Bedi, J

Bench: Single Bench

Advocate: Surinder Mohan Sharma, for the Appellant; S.C. Kapoor and Gurmohan Singh, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Harjit Singh Bedi, J.

This appeal is directed against the judgment of the Additional District Judge, Amritsar dated 1.9.1988 allowing the appeal of the defendant - appellants and dismissing the suit filed by the plaintiff-respondent. The facts of the case have been elaborately set out in the judgment under appeal but as the issue has crystallized only on a limited point. The facts need not be adverted to in detail.

2. The plaintiff filed a suit for declaration to the effect that the judgment and decree dated 19th September 1979 passed inter parties herein ought to be set aside as being a nullity as the plaintiff on the date of that judgment and decree was not of sound disposing mind and therefore not able to effectively prove his case. The trial Court framed a number of issues and issue No. 1 being relevant is reproduced below:-

"Whether the judgment and decree dated 19.9.1979 passed by Sh. K.S. Kauldhar, Sub Judge, Patti in civil suit No. 261/1977 for setting aside the order dated 12.8.1975 is void and has become infructuous as alleged ? OPP"

3. The Court held on the evidence before it that the judgment and decree dated 19th September 1979 was rendered at a time when the plaintiff was not in his senses and thus being a nullity would not bind the plaintiff. The matter was thereafter taken in appeal by the aggrieved party and vide the impugned judgment the appeal was allowed and the suit dismissed. Aggrieved thereof the plaintiff has come up by way of this second appeal.

4. The only point argued by Mr. S.M. Sharma, learned counsel for the appellant is that the finding of fact recorded by the lower Appellate Court regarding the unsoundness of mind of the appellant was unsustainable in the light of the evidence adduced. He has drawn my attention to Exhibit P-1/A dated 28th December 1979, which is a copy of the outdoor ticket of the Mental Hospital, Amritsar wherein the appellant admittedly received some treatment. It has been urged that the judgment dated 19.9.1979 in the earlier suit was rendered only a few months prior to his treatment in the Mental Hospital, Amritsar. He has also asserted that the evidence of the Compounded, Joginder Pal PW-4 who was working with Dr. Puri, a. private Medical practitioner, who had also treated the appellant prior to 28th December 1979, corroborated the fact of the appellant's mental sickness.

5. Mr. S.C. Kapoor, the learned Senior Advocate, appearing for the respondents has, however, urged that the appellant was suffering from schizophrenia which did not have an element of permanency so that the appellant even if afflicted by it could yet look after his affairs or watch his interest as would be evident from even a casual look at Ex. P-1/A. He has argued that the appellant appeared in the Mental Hospital on 28.12.1979 for the first time i.e. after a period of more than three months of date of decision i.e. 19.9.1979 and this itself would show that the appellant's mental capacity was not impaired.

6. After hearing learned counsel for the parties I find that there is no merit in the appeal. The lower Appellate Court has recoded its finding of fact on a proper appreciation of the evidence and has found no merit in the suit. No proper evidence about the incapacity of the appellant prior to 28.12.1979 has been pointed out and even in Ex. P. 1/A. It has been clearly stated that the illness diagnosed dated back to only four days. It would also be seen that one of the primary matters which influenced the trial Court in deciding in favour of the appellant was that he had made a statement Ex. D-2 which appeared to show that he was totally insane. The lower Appellate Court, however, found and I believe correctly (as I too have gone through it) that this statement though attributed to the appellant was in fact made by his counsel-I also endorse the finding of the lower Appellate Court that in the absence of any record to corroborate his statement (as the record was admittedly maintained) no reliance can be placed on the statement of Joginder Pal P-W.4.

7. No other point has been urged.

8. For the reasons recorded above, the present appeal being devoid of merit is dismissed with no order as to costs.