
Charanjit Singh Sekhon Vs Jagjit Singh and Others

S.A.O. No. 17 of 2012

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 11, 2012

Citation: (2013) 1 RCR(Civil) 554

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Jatinder Singh, for the Appellant; S.S. Salar, Advocate, for the Respondent

Final Decision: Allowed

Judgement

L.N. Mittal, J.

Suit filed by respondent No. 1-plaintiff has been dismissed by the trial court vide judgment and decree dated 12.08.2008.

In first appeal preferred by the plaintiff, learned lower appellate court, vide judgment dated 23.01.2012, has remanded the suit to trial court for

fresh decision because issues No. 12 and 13 had not been decided by the trial court. The trial court has also been directed to give opportunity to

lead evidence afresh to both the parties and then to decide all the issues afresh. Judgment and decree of the trial court have been set aside. Feeling

aggrieved, defendant No. 1 has filed this Second Appeal from Order.

I have heard counsel for the parties and perused the case file.

Counsel for the appellant contended that without setting aside the findings of the trial court on other issues, the suit could not have been remanded.

It was also contended that report could be obtained from the trial court regarding findings on issues No. 12 and 13 (which had not been decided

by the trial court). It was also canvassed that opportunity to lead evidence afresh also could not have been granted while remanding the suit on the

aforesaid ground.

2. I have carefully considered the aforesaid contentions and find considerable merit therein. The suit could not be remanded merely because the

trial court failed to record findings on issues No. 12 and 13 regarding estoppel and locus standi of the plaintiff to file the suit. Moreover, judgment

and decree of the trial court could not have been set aside and suit could not have been remanded without setting aside the findings of the trial

court on other issues. Opportunity to lead fresh evidence could also not be granted to the parties. As regards issues No. 12 and 13, which were

left undecided by the trial court, the lower appellate court, without remanding the suit, could have called for report on the said issues from the trial

court.

3. In view of the aforesaid circumstances, I find that the impugned judgment of the lower appellate court is illegal and suffers from jurisdictional

error. There was no occasion for remanding the suit to the trial court.

4. Accordingly, the instant Second Appeal from Order is allowed. Impugned judgment dated 23.01.2012 passed by the lower appellate court is

set aside. First appeal preferred by the plaintiff is restored to the files of the lower appellate court for fresh decision in accordance with law after

seeking report from the trial court on issues No. 12 and 13.

5. Parties are directed to appear before the lower appellate court on 09.01.2013. Counsel for respondent No. 1-plaintiff stated that he may be

granted liberty to file application for additional evidence. I need not express any opinion on the same. If and when any such application is moved,

the same shall be dealt with by the lower appellate court without being influenced by any observation in the instant order.