

Harbans Kaur Etc. and ors. Vs. Hardev Kaur Etc. and ors.

Harbans Kaur Etc. and ors. Vs. Hardev Kaur Etc. and ors.

SooperKanoon Citation : sooperkanoon.com/622038

Court : Punjab and Haryana

Decided On : Mar-06-2006

Reported in : (2006)143PLR773

Judge : Viney Mittal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 32, Rules 3 and 4

Appeal No. : S.A.O. No. 18 of 2003

Appellant : Harbans Kaur Etc. and ors.

Respondent : Hardev Kaur Etc. and ors.

Advocate for Def. : Hitesh Sood, Adv. for Respondent Nos. 6 and 7

Advocate for Pet/Ap. : Ashok Singla, Adv.

Disposition : Appeal allowed

Judgement :

Viney Mittal, J.

1. The present appeal has been filed by defendants No. 2 and 3. Judgment and decree dated April 16, 2003, passed by the learned Additional District Judge, Sangrur had been challenged. Learned Additional District Judge vide the aforesaid order had set aside the judgment and decree dated September 10, 1999 passed

by the learned trial court and remanded the case back to it for fresh decision.

2. The facts which emerge from the record show that a suit for joint possession and for permanent injunction was filed by the plaintiffs, Hardev Kaur, Balbir Kaur and Raj Mohinder Kaur. In the aforesaid suit Bant Singh, Harbans Kaur, Guddi (minor), Sukhdev Kaur, Gurmail Singh and Nohar Singh were impleaded as defendants.

3. Learned trial court vide judgment and decree dated September 10, 1999 dismissed the suit filed by the plaintiff. In these circumstances, the matter was decided in favour of the defendants including defendant No. 3 Guddi (minor).

The plaintiffs took up the matter in appeal. During the course of the appeal before the learned appellate court, defendant No. 5, Gurmail Singh filed an application claiming that defendant No. 3, Guddi, was a minor and the mandatory provisions of Order 32 Rule 3 of the Code had not been complied with by the learned trial court, inasmuch as no guardian of the minor had been appointed. In these circumstances, it was claimed that the judgment and decree of the learned trial court was liable to be set aside. A prayer was made that the suit filed by the plaintiff was liable to be dismissed on that ground alone.

4. The learned appellate court while considering the application noticed that the guardian of the minor, Guddi, had not been appointed by the plaintiff and, therefore, the provisions of Order 32 Rule 3 of the Code had not been complied with. Consequently, the judgment and decree of the learned trial court were set aside and the matter was remanded back to the learned trial court for fresh decision after compliance of the provisions of Order 32 Rules 3 & 4 of the Code. The aforesaid order of the learned trial court has now been assailed by defendants No. 2 and 3 before this Court.

5. Shri Ashok Singla, learned Counsel appearing for defendants No. 2 and 3 has vehemently argued that the appellate Court has clearly erred in law inasmuch the suit in question had been decided in favour of defendant No. 3 (minor Guddi). In these circumstances it has been argued that since the suit had been decided in favour of the aforesaid minor, therefore, neither any prejudice was shown to be

caused nor there was any other infirmity in the judgment and decree of the learned trial court and therefore, the said judgment and decree of the learned trial court could not have been set aside by the learned appellate court.

6. I have duly considered the aforesaid argument of the learned Counsel and find force in the same.

7. A perusal of the judgment of the learned trial court shows that the suit of the plaintiff had been dismissed. Defendant No. 3 along with other defendants had filed a common written statement before the trial court. The plea raised on behalf of the defendants had been accepted by the learned trial court and, consequently, the claim of the plaintiff had been rejected. In these circumstances, once the matter had been decided in favour of the minor, then it could not be said that on non-compliance of the mandatory provisions of order 32 Rule 3 any prejudice had been caused to the minor. The judgment and decree of the learned trial court could not have been set aside on this ground at all.

8. Even otherwise from the perusal of the application filed by Gurmail Singh, I find that he had merely stated that the suit filed by the plaintiff against minor is defective. Rather than passing any order on the said application the learned appellate court had chosen to set aside the judgment and decree of the learned trial court which was, in fact, an order dismissing the suit of the plaintiff on merits of the controversy.

9. Consequently, the present appeal is allowed. Order dated April 16, 2005 passed by the learned appellate court is set aside. The appeal filed by the plaintiff before the appellate court is restored back to its original number. The appellate court is now directed to decide the main appeal itself on merit; of the controversy. However, the learned appellate court shall appoint a guardian if the aforesaid minor's interest remains unrepresented.

10. The parties are directed to appear before the learned Additional District Judge, Sangrur on May 2, 2006.