

Before Mehinder Singh Sullar, J.

HARDEVINDER SINGH,—Appellant

versus

PARAMJIT SINGH AND OTHERS,—Respondents

RSA No.85 of 2007

28th July, 2011

Code of Civil Procedure 1908 - S. 11, 96 & 100 - Right to appeal - Maintainability of appeal - Appellant aggrieved by finding in first appeal - Contesting defendant did not challenge impugned decision - Held, right to appeal inheres in no one - No appeal can be filed against a mere finding - S.96 & 100 of CPC provide appeal against decree not judgment.

Held, That it was held by the Hon'ble Supreme Court in case Smt.Ganga Bai Versus Vijay Kumar and others AIR 1974 Supreme Court 1126(1), that there is an inherent right in every person, to bring a suit of a civil nature and unless the suit is barred by statute, one may, at one's peril, bring a suit of one's choice. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to the appeals is quite opposite. The right of appeal inheres in no one and therefore, an appeal for its maintainability must have the clear authority of law and no appeal can lie against a mere finding for the simple reason that the Code does not provide for any such appeal.

(Para 13)

Further held, That the first Appellate Court has dismissed the suit of the plaintiff, in the manner described here-in above, therefore, the regular second appeal filed by one of defendant No.5, is not legally maintainable, which is hereby dismissed.

(Para 15)

Arun Jain, Senior Advocate, with Mr.Jaivir S.Chandail, Advocate,
for the appellant.

Kanwaljit Singh, Senior Advocate, with Mr.Harmanjit Singh,
Advocate, for respondent Nos.1 to 3.

V.S.Rana, Advocate, for respondent No.4.

Vishal Deep Goyal, Advocate, for respondent No.5.

MEHINDER SINGH SULLAR, J. (ORAL)

Concisely, the relevant facts, which need a necessary mention for the limited purpose of deciding the core controversy, of maintainability of the instant appeal and emanating from the record are, that Sarabjit Singh son of Shiv Singh-respondent No.5-plaintiff(hereinafter to be referred as “the plaintiff”) filed the suit for a decree of possession, in respect of the disputed land, to the extent of his share, treating the Will, if any, in favour of defendant Nos.1 to 4, illegal, null & void, with a consequential relief of permanent injunction, restraining his mother Smt.Parkash Kaur wife of Shiv Singh(defendant No.1), nephews-Paramjit Singh, Mandeep Singh and Sukhjinder Singh sons of Harbarjinder Singh-respondent Nos.1 to 3-defendant Nos.2 to 4 and brothers Hardevinder Singh son of Shiv Singh-appellant-defendant No.5 and Harbarjinder Singh son of Shiv Singh respondent No.4-defendant No.6(for brevity “the defendants”), from alienating the suit land, in any manner.

(2) The case set-up by the plaintiff, in brief, insofar as relevant was, that the suit land in the hands of his father Shiv Singh, was ancestral coparcenary and joint Hindu family property. He along with his brothers-defendant Nos.5 and 6 constituted a joint Hindu family with their father and mother. So, they were all in possession of the land being co-owners. However, defendant Nos.1 to 4 have forcibly and illegally taken the possession of the suit land, on the basis of some forged Will. The Will was stated to be illegal, null and void. On the basis of aforesaid allegations, the plaintiff filed the suit for a decree of possession and permanent injunction against the defendants, in the manner depicted hereinabove.

(3) The contesting defendant Nos.1 to 4 refuted the claim of the plaintiff and filed the written statement, inter alia, pleading certain preliminary objections of, maintainability of the suit, cause of action and locus standi of the plaintiff. The suit land was claimed to be self-acquired property of

Shiv Singh, who voluntarily was stated to have executed the registered Will dated 06.07.1989 in their favour. Therefore, after his death, they became the owner and in possession of the suit land, in pursuance of the indicated registered Will.

(4) Although, defendant No.5 filed his separate written statement toeing the line of pleadings contained in the plaint, however, defendant No.6 filed his separate written statement terming the suit land to be self-acquired property in the hands of his father Shiv Singh, who voluntarily executed the registered Will in favour of defendant Nos.1 to 4. It will not be out of place to mention here that the contesting defendants have stoutly denied all other allegations contained in the plaint and prayed for dismissal of the suit.

(5) The trial Court decreed the suit of the plaintiff and declared the Will dated 06.07.1989, as null & void, by way of impugned judgment and decree dated 30.04.2003.

(6) Aggrieved by the impugned decision of the trial Court, Paramjit Singh, Mandeep Singh and Sukhjinder Singh sons of Harbarjinder Singh contesting defendant Nos.2 to 4, filed the appeal, which was accepted and the first Appellate Court dismissed the suit of the plaintiff, by virtue of impugned judgment and decree dated 11.10.2006.

(7) Plaintiff-Sarabjit Singh and contesting defendant Nos.1 to 4 and 6 accepted and did not challenge the impugned decision of the first Appellate Court. However, only Hardevinder Singh-defendant No.5 did not feel satisfied with the same and preferred the present regular second appeal, which was ultimately placed before me and that is how, I am seized of the matter.

(8) At the very outset, during the course of hearing at motion stage of the appeal, learned counsel for the respondents has very vehemently raised a preliminary objection, with regard to the maintainability of the instant regular second appeal only, filed by defendant No.5.

(9) Faced with the situation, the solitary contention of the learned counsel for the appellant that, the appeal filed by appellant-defendant No.5, is maintainable, is neither tenable, nor the observations of this Court in case

Arjun Singh versus Bachan Singh and others (1), are at all applicable and extinguishable on facts, wherein it was observed that even if the main suit was dismissed, but the finding recorded regarding the rights of the parties would certainly attract the provisions of Section 11 of the CPC and the appellant(therein) had a right to challenge that finding by way of further appeal. Possibly, no one can dispute with regard to the aforesaid observations, but to me, the same would not come to the rescue of the appellant in the instant controversy.

(10) As is evident from the record that, having completed all the codal formalities and taking into consideration the entire oral as well as the documentary evidence, brought on record by the parties, the trial Court decreed the suit of the plaintiff and declared the indicated Will, as null & void, by means of impugned judgment and decree dated 30.04.2003. The appeal filed by Paramjit Singh, Mandeep Singh and Sukhjinder Singh sons of Harbarjinder Singh-defendant Nos.2 to 4, was accepted and the suit of the plaintiff was dismissed by the first Appellate Court, by means of impugned judgment and decree dated 11.10.2006.

(11) Above, being the position on record, now the sole question that arises for determination in this matter is, as to whether the present regular second appeal only filed by defendant No.5, is maintainable or not?

(12) Having regard to the rival contentions of the learned counsel for the parties, to me, the answer would obviously be in the negative. Once, the suit of the plaintiff was dismissed by the first Appellate Court, then to my mind, defendant No.5 cannot possibly be termed to be an aggrieved party, by the impugned decree and the appeal filed by him(defendant No.5) against the dismissal of the suit filed by the plaintiff, is not legally maintainable, as contemplated under Section 100 CPC in this context.

(13) What is not disputed here is that, only aggrieved person by a decree (not by findings) can legally maintain the appeal. The right of appeal is a creature of statute and no appeal lies against the mere finding. It was held by the Hon'ble Supreme Court in case **Smt.Ganga Bai versus Vijay Kumar and others (2)**, that there is an inherent right in every person, to

(1) 2009 (2) PLR 328

(2) AIR 1974 SC 1126

bring a suit of a civil nature and unless the suit is barred by statute, one may, at one's peril, bring a suit of one's choice. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to the appeals is quite opposite. The right of appeal inheres in no one and therefore, an appeal for its maintainability must have the clear authority of law and no appeal can lie against a mere finding for the simple reason that the Code does not provide for any such appeal.

(14) Again, an identical question came to be decided by the Hon'ble Apex Court in case **Banarsi and others Versus Ram Phal (3)**. Having considered the provisions of Sections 96 and 100 of the CPC, it was ruled (para 8) as under:-

“Sections 96 and 100 of the CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree, he is not entitled to file an appeal. See Phoolchand and another V. Gopal Lal, 1967(3) SCR 153; Smt.Jatan Kanwar Golcha Vs. M/s Golcha Properties(P) Ltd., 1970(3) SCC 573; Smt.Ganga Bai V. Vijay Kumar and others, (1974) 2 SCC 393. No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 of the CPC provide for an appeal against decree and not against judgment.”

(15) In the light of aforesaid reasons, to my mind, as the first Appellate Court has dismissed the suit of the plaintiff, in the manner described here-inabove, therefore, the regular second appeal filed by one of defendant No.5, is not legally maintainable, which is hereby dismissed as such in the obtaining circumstances of the case.

A. Agg.