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CM-6545-C-2022
CM-6547-C-2022
CM-6550-C-2022 IN/AND
RSA-717-2021

DAYAL SINGH VS AMARJIT SINGH AND OTHERS

Present:- Mr. Vipin Mahajan, Advocate
for the applicant/appellant.

CM-6545-C-2022

Heard.

Allowed as prayed for.

Document (Annexure A-2) is taken on record subject to all just exceptions.

CM-6547-C-2022

Prayer in this application is for preponing the date fixed in the main petition.

Heard.

For the reasons stated in the application, the same is allowed and the date fixed in the main petition is preponed for today.

RSA-717-2021 (O&M)

Counsel for the appellant *inter alia* contended that apart from merits of the case, the Lower Appellate Court has, in fact, miserably failed to apply its judicial mind as in the impugned order passed by the Lower Appellate Court, the judgment passed by the trial Court is just copied and pasted, line to line, word to word and even, there is no change of comma or full stop, which reflects that the Lower Appellate Court has not applied its judicial mind or has tried to understand the controversy between the parties.

Counsel for the appellant has referred to the finding recorded by the trial Court on contested Issues No.1 and 4 starting from Para 11 of the judgment till its conclusion drawn by the trial Court on these Issues upto Para 12 of judgment.

Counsel for the appellant has then, referred to the finding recorded by the Lower Appellate Court in Para 35 to Para 45 wherein the Issues, in dispute (Issues No.1 and 4), have been considered and word to word, trial Court order is copied and pasted and only in the conclusion part, some observations are made by the Lower Appellate Court.

Counsel for the appellant has further referred to the judgment "**H. Siddiqui (D) by LRs vs A. Ramalingam**", 2011(4) SCC 240, wherein the Hon'ble Supreme Court has held that the first appeal court against the order of the subordinate Court must assess independently the evidence of the parties and consider the relevant points, which arise for adjudication having bearing on merits of these points and such exercise should be done after formulating the points.

Counsel for the appellant has then, relied upon the judgment "**Anita Kuer and others vs Chandra Bhushan Singh and others**", 2014(11) RCR (Civil) 1618, passed by the Patna High Court, wherein in similar circumstances, it was observed that the judgment of the Lower Appellate Court is vitiated on account of the fact that the judgment is nothing but copied from the trial Court judgment and only in the last paragraph, the Appellate Court has expressed that it agrees with the finding recorded by the trial Court and therefore, the same does not meet the mandatory provisions of Order 41 Rule 31 CPC.

Counsel for the appellant has lastly, relied upon the judgment “***B.V. Nagesh and another vs H.V. Sreenivasa Murthy***”, 2010 (10) SCC 551, wherein the Hon’ble Supreme Court has held, as under:-

“The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put- forth and pressed by the parties for decision of the appellate Court. Sitting as a court of appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings.”

On merits, counsel for the appellant has argued that once it is demonstrated that the Lower Appellate Court has failed to apply its judicial mind, there is nothing on record to suggest that the finding recorded by the trial Court was independently assessed by the Lower Appellate Court though, it has come in the statement of DW-2 Lakhwinder Singh, Kanungo Halqa, that the land is still joint amongst the co-owners and is not partitioned by metes and bounds and therefore, the counsel argues that the suit for possession is not maintainable at the

instance of the other co-sharers as the remedy lies for partition of the same.

Notice of motion for 27.03.2023.

In the meantime, operation of the impugned order shall remain stayed.

The Judicial Officer, who has passed the judgment is directed to submit an explanation well before the next date of hearing i.e. 27.03.2023.

The District & Sessions Judge, Gurdaspur, is also directed to randomly check at least 10 judgments passed by the said Judge in civil appeals, to find out whether a similar modus is applied by the said Judge, while deciding the civil appeals and submit a report, in this regard.

The explanation as well as the report be sent before this Court, positively well before the next date of hearing i.e. 27.03.2023.

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(ARVIND SINGH SANGWAN)
JUDGE

19.09.2022
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