संलग्नक 20/(2)

Order & Judgment of Civil Appeal Affirmed by Hon'ble H.C.

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HIGH COURT AT ALLAHABAD

Computerized Copying Section, High Court of Judicature at Allahabad, Lucknow Bench

Requisition Information

Folio No.	Application Date	Case Type	Case No.	Year	Case filed at	Date of Judgment/Order	Court Fee	No.of Pages
10021 of 2020	3.2.2020	FAFO	36	2020	Lucknow	28.1.2020	15.0	2

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Court No. - 18

Case :- FIRST APPEAL FROM ORDER No. - 36 of 2020

Appellant :- Yunus Khan & Another
Respondent :- Ram Das @ Dhodhey & Others
Counsel for Appellant :- Piyush Chandra Agarwal,Ashish Kumar Srivastava,Mahendra Kumar Sharma,Rajesh Tiwari
Counsel for Respondent :- Prahlad Maurya

Hon'ble Attau Rahman Masoodi,J.

Heard Sri Rajesh Tiwari learned counsel for the appellants and Sri Prahlad Maurya learned counsel who has put in appearance on behalf of the opposite party no. 1.

Opposite party nos. 2 and 3 being defendants in the suit proceedings are the proforma parties. Thus, issuance of notice to opposite party nos. 2 and 3 is dispensed with.

This appeal under Section 104 read-with Order 43 Rule 1(u) C.P.C. has arisen against the judgment/order dated 12.12.2019 whereby the Regular Civil Appeal No. 15 of 2017 filed under Section 96 C.P.C. was allowed and the case was remanded to the trial court for deciding the issues on merit afresh.

It is undisputed that a suit for permanent injunction was filed before the trial court wherein the parties were duly served. The trial court after exchange of pleadings also appears to have framed issues in the suit proceedings. Issue no. 6 was framed as to whether the plaintiff did not have a right to sue. The trial court seems to have proceeded to take up issue no. 6 which was decided on the basis of pleadings. The other issues were left undecided while dismissing the suit.

The respondent no. 1(plaintiff) feeling aggrieved against the judgment/decree dated 22.11.2017 preferred a Regular Civil Appeal under Section 96 C.P.C. before the appellate court below. The first appellate court below while deciding the Regular Civil Appeal formulated two points for determination. Firstly, as to whether the trial court was right in deciding issue no. 6 on the basis of pleadings even after the framing of the issues and proceeding to take the evidence of P.W. 1 on affidavit and without recording any further evidence. The second point was framed as to whether the trial court merely on the basis of observations made by the trial court in the order rejecting injunction application and in the order of rejection of Misc. appeal arising therefrom was right to decide the issue of right to sue that too without recording any evidence and could

arrive at a just conclusion to reject the suit for permanent injunction.

This Court having regard to the observations made by the first appellate court below is of the considered opinion that the first appellate court has rightly addressed the points of determination and no prejudice is going to be caused to the appellant who has an opportunity to contest the trial on merit.

The suit proceedings are expected to be expedited and decided without any inordinate delay. The respondent no. 1 also undertakes to co-operate with the suit proceedings and shall not seek unnecessary adjournment in the matter.

The appeal is accordingly disposed of.

Order Date :- 28.1.2020
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