

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.3469 of 2009(O&M)
DATE OF DECISION:22.01.2015

Smt. Hamidi

...Appellant

Vs.

Hasan Mohd. & anr.

...Respondents

(2)

RSA No.3470 of 2009(O&M)

Smt. Hamidi

...Appellant

Vs.

Abdul & ors.

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sudhir Aggarwal, Advocate
for the appellant.

Mr.Jai Bhagwan, Advocate
for respondent No.1.

Mr.Kanwar Goyal, Advocate
for respondent No.2.

AMIT RAWAL, J.(ORAL)

The present order of mine shall dispose of RSA Nos.3469 and
3470 of 2009 filed by Hamidi appellant-plaintiff against the judgment and

decree passed by the lower appellate Court. The appellant/plaintiff filed the suit for declaration in the year 1998, whereby the judgement and decree dated 21.07.1988, alleged to have been suffered in favour of Hasan Mohd.-defendant-respondent No.1, was challenged.

The said suit was contested by respondent No.1 Hasan Mohd. and respondent No.2 Abdul vendee who stated to have purchased suit property by virtue of sale deed dated 25.04.1994 through attorney of Hasan Mohd. The plaintiff invoked the cause of action in the year 1998 on the ground that she acquired the knowledge of the decree dated 21.07.1988 when Jummal got a decree dated 23.08.1997 in a suit for preemption filed against Abdul-respondent No.2.

The trial Court on the basis of the aforementioned findings found that dispute of the appellant-plaintiff was within the period of limitation and also held that the decree dated 21.07.1988 was an Act of fraud and misrepresentation. The said judgment and decree was assailed by defendants No.1 and 2 by filing two appeals. Both the appeals have been allowed and the judgment and decree of the Trial Court has been set aside and thus the aforementioned two regular second appeals at the instance of the appellant/plaintiff.

Mr. Sudhir Aggarwal, learned counsel appearing on behalf of the appellant-plaintiff contends that the finding rendered by the lower appellate Court that the suit was time barred is nothing but erroneous and perverse as the Lower appellate Court failed to notice very important fact that it is only in the year 1997 when Jummal obtained a decree of presumption the appellant-plaintiff came to know about the decree dated 21.07.1988 which

was alleged to have been taken by playing fraud and misrepresentation by respondent No.1 who is none else but the brother of the appellant-plaintiff and accordingly the suit was filed in the year 1988. He further submitted that the appellant/plaintiff did not have any knowledge of the aforementioned decree.

Mr.Kanwar Goyal, learned counsel appearing on behalf of respondent No.2 contends that appellant-plaintiff while in cross-examination admitted that Jummal is non-else but the son-in-law of the appellant-plaintiff. The appellant-plaintiff has also unequivocally admitted that she had been coming and going in the company of Jummal. He has further submitted that the preemption decree dated 23.08.1997 was challenged by defendant No.1 by filing an appeal before the lower appellate Court and judgment and decree has been set aside by the lower appellate Court on 10.05.2001 vide Exhibit D-2/6. He has further contended that immediately after the passing of the decree dated 21.07.1988 the property was mutated in favour of Hasan Mohd. Even Abdul had filed an application before the revenue authorities for correction of khasra-girdawari and the khasra-girdawari was corrected and entered in the name of Respondent No.1 and thereafter same has been sold in his favour. The defendant has proved on record Exhibits D-2/A to Exhibit D-2/15 which are orders passed by the revenue authorities and much less by this Court as the parties reached this Court by assailing the findings of the revenue Courts.

Mr.Jai Bhagwan, learned counsel appearing on behalf of respondent No.1 submits that decree passed on 21.07.1988 whereas the property was sold to respondent No.2 in the year 1994, nobody raised a

finger by challenging the decree as the factum of the sale by respondent No.1 in favour of respondent No.2 was in the knowledge and notice of the appellant/plaintiff.

I have heard learned counsel for the parties with their able assistance and appraised the impugned judgment and decree of the lower appellate Court. The argument of Mr.Sudhir Aggarwal, learned counsel appearing on behalf of appellant-plaintiff, is devoid of merit much less does not have any substance/force in as much as that the appellant-plaintiff has unequivocally admitted to a specific question in the cross-examination that she had been coming in and out in the company of Jummal who is none else but her son-in-law. It can not be believed that Jummal son-in-law of Hamidi who had instituted the suit in the year 1994 and allegedly decree, would not be known to Hamidi. The entries in the khasra-girdawari were also corrected and it is improbable that Hamidi would not having any knowledge of the consent decree dated 21.07.1988. The lower appellate Court while setting aside the judgment and decree of the trial Court categorically came to a conclusion that the suit of the appellant was not within the period of limitation as Abdul had purchased property in dispute from Hasan Mohd. respondent No.1/defendant No.1 in the year 1994 and suit had been filed in the year 1998 beyond period of three year. The plea of the appellant-plaintiff that the land was given on batai to defendant No.3 Jummal stood falsified as khasra girdawari were corrected in favour of respondent No.1 and the matter reached even up to this Court. DW-3/A in his affidavit categorically stated that before the purchase of the property, name of the defendant No.1 had been entered on

the basis of mutation and after making reasonable enquiry he purchased the property. It appears that the suit has been filed by appellant-plaintiff out of greed and as an arm twisting method. No fault can be found with the findings rendered by the lower appellate Court. Lower appellate Court has given a finding of fact and law based on appreciation the oral and documentary evidence being the last Court of factum and law and has discharged the obligation as enshrined under Section 96 of Code of Civil Procedure.

No substantial question of law arises for adjudication of the present appeal. Accordingly the appeal is dismissed.

22.01.2015
rimpal

(AMIT RAWAL)
JUDGE