

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

207

RSA No.4695 of 2010 (O & M)

Date of Decision:01.09.2015

Satya Parkash and another

....appellants

Versus

Krishan and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

1.Whether Reporters of local papers may be allowed to see the judgement?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Present: Mr.Rakesh Nehra, Advocate
for the appellants

Mr.Jai Vir Yadav, Advocate
for respondents No.1 to 3, 5 and 7 to 11

Mr.R.A.Yadav, Advocate
for respondents No.12 to 15

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiffs was dismissed by the trial Court, vide judgment and decree dated 03.03.2003. Appeal preferred against the said decree failed, and, was dismissed on 22.12.2009. This is how, plaintiffs are before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiffs, they prayed for a declaration that they, as also defendant No.8, were owners in possession of the suit property and the decree dated 21.03.1994

(incorrectly recorded as 01.03.1994 by both the Courts), rendered in Civil Suit No.121 of 1994, titled “Krishan Chand etc. vs. Jhamman Singh” allegedly suffered by Jhamman Singh in favour of defendants No.1 to 7 was liable to be set aside being illegal and void. Jhamman Singh never appeared in the said proceedings and consequently, did not suffer any such decree. Defendants No.1 to 7 in fact, obtained the said decree by impersonation by producing some other person in place of Jhamman Singh. Jhamman Singh was concededly the owner in possession of the suit land and vide Will dated 11.08.1989, he bequeathed the suit property in favour of the plaintiffs and defendant No.8. Thus, plaintiffs and defendant No.8 were owners of the suit property to the extent of half share each. As defendants No.1 to 7 refused to have the said decree set aside and acknowledge the claim of plaintiffs and defendant No.8, thus, the suit.

In defence, defendants No.1,2 and 5 to 7, filed a joint written statement and denied the claim of the plaintiffs. It was pleaded, inter alia, that neither the plaintiffs nor defendant No.8 were the owners in possession of the suit property, as being claimed on the basis of some Will allegedly executed by Jhamman Singh. Decree, rendered in Civil Suit No.121 of 1994, dated 21.03.1994, was indeed suffered by Jhamman Singh in their favour.

Defendant No.10 filed a separate written statement and claimed himself as also defendants No.9 and 11, to be the bona fide purchasers for consideration from defendants No.1 to 7.

On a consideration of the matter in issue and the evidence on record, learned trial Court arrived at a conclusion that

the execution of the Will dated 11.08.1989, propounded by the plaintiffs, executed by Jhamman Singh, was proved. The plea, that the decree dated 21.03.1994 suffered by Jhamman Singh was a result of fraud, remained, unsubstantiated. Sh.M.S.Yadav, Advocate, Jhajjar (PW4) testified that he appeared on behalf of defendants No.1 to 7 in Civil Suit No.121 of 1994. Further, he had been practicing as an advocate in Jhajjar Courts since 1990 and had submitted the plaint in the said suit at the asking of defendants No.1 to 7. Similarly, Sh.Pawan Kumar, Advocate, Jhajjar (PW5), who appeared for Jhamman Singh, deposed in no uncertain terms that he had seen the written statement in the summoned file i.e. Civil Suit No.121 of 1994, which he had prepared on instructions from Jhamman Singh and after the contents thereof were read over, he put his thumb impression/signatures thereon. In response to the suggestion put to him, he categorically admitted that Jhamman Singh had engaged him as a counsel and the Vakalatnama on the same file was submitted by him on behalf late Jhamman Singh. Later, Jhamman Singh also made a statement in the Court in his presence and affixed his thumb impression. That being so, it was concluded that Jhamman Singh indeed suffered a decree dated 21.03.1994 in favour of defendants No.1 to 7. None other than Gian Parkash (PW8) i.e. plaintiff No.2, conceded in his cross examination that he came to know of the decree dated 21.03.1994 suffered by Jhamman Singh, during his lifetime and they even asked Jhamman Singh, whether he had actually suffered any decree or not. But despite that, neither Jhamman Singh nor the plaintiffs filed any suit and

questioned the said decree, immediately. That being so, it was concluded that as the Will dated 11.08.1989, executed by Jhamman Singh would have come in operation only post his death, though, the execution thereof was proved but the same was of no consequence. Accordingly, the suit was dismissed.

Being aggrieved against the said decree, plaintiffs preferred an appeal. Appellate Court, reviewed the matter in issue, evidence on record and, on analysis thereof, found itself in concurrence with the findings recorded by the trial Court.

I have heard learned counsel for the parties and perused the records.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Concededly, the suit property was owned by Jhamman Singh. For plaintiffs to succeed, they were required to prove that the decree dated 21.03.1994 rendered in Civil Suit No.121 of 1994, suffered by Jhamman Singh, in favour of defendants No.1 to 7, was indeed a result of fraud. The Courts below concurrently recorded that the plaintiffs failed to lead any cogent or credible evidence to substantiate the said plea. On the contrary, testimony of Pawan

Kumar, Advocate, Jhajjar (PW5), examined by the plaintiffs proved that he was engaged as a counsel by Jhamman Singh in Civil Suit No.121 of 1994 and he had filed the Vakalatnama, duly signed/thumb marked by Jhamman Singh in the said proceedings. He filed the written statement, duly thumb marked/signed by Jhamman Singh, certified copy of which was Ex.PW5/A and he appeared in Court and made a statement, which too was thumb marked by him. There could not be any dispute even as regards the identity of the deceased Jhamman Singh, as he was identified by Krishan Singh, Lambardar, who, in turn, was identified by Pawan Kumar, Advocate (PW5). The said deposition of PW5 remained un-rebutted as regards identification of Jhamman Singh. Likewise, testimony of M.S.Yadav, Advocate, Jhajjar (PW4) also corroborated the said version. Concededly, plaintiffs were not in actual, physical possession of the suit land and, thus, it was rightly concluded that a mere suit for declaration without claiming possession was not competent. Defendants No.9 to 11 were found to be the bona fide purchasers for valuable consideration. Nothing could be pointed out as to how the finding recorded, in this regard, was erroneous.

Learned counsel for the appellants could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less

any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

01.09.2015

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**(ARUN PALLI)
JUDGE**