

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

**RSA No.2640 of 2011 (O & M)
Date of Decision:06.02.2015**

Manoj Kumar

....appellant

Versus

Gig Raj 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. Ashish Gupta, Advocate
for the appellant

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was dismissed by the trial Court vide judgement and decree dated 14.02.2008. Appeal preferred against the said decree failed and was dismissed on 22.12.2010. This is how, plaintiff is 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, plaintiff Manoj Kumar prayed for a declaration that he was owner of the shop comprised in an area measuring 22.2 sq.yards and bounded on the east by street, in the west by shop of Balwant, on the north by road and south by shop of Mani Ram, situated at bus stand, Jui Khurd, Tehsil and District Bhiwani. Further,

sale deed dated 28.06.1994, executed by defendant No.3, in favour of defendants No.1 and 2, was null and void, as the land, as well as the shop constructed thereon, being a joint Hindu family coparcenary, had fallen to the share of the plaintiff in a family settlement. A decree for possession qua the shop was also claimed. It was averred that plaintiff happened to be the son of defendant No.3 i.e. Ishwar Singh. Originally, plaintiff and defendant No.3 had constituted a joint Hindu Family and the plaintiff was a member thereof and defendant No.3 was the 'Karta'. However, defendant No.3, on the demise of his father Sh. Ram Singh, succeeded to the lands comprised in khewat No.85, 96 and 98, situated in village Jui Khurd, Tehsil and District Bhiwani and the suit property could be described as coparcenary property. Pursuant to a family settlement arrived at between the plaintiff and defendant No.3, suit property had fallen to the share of the plaintiff. And in a suit filed by the plaintiff-Manoj Kumar against his father i.e. Ishwar Singh-defendant No.3, a decree dated 18.09.1993 qua the suit property was passed in favour of the plaintiff. However, defendant No.3 sold the shop in question pursuant to sale deed dated 28.06.1994, in favour of defendants No.1 and 2, thus, the said deed was illegal and void. As defendant No.3 had no right, title or interest left therein, thus, the suit.

In defence, it was pleaded, inter alia, by defendants No.1 and 2, that the property that was transferred in favour of the plaintiff, pursuant to the decree dated 18.09.1993 was altogether different. In fact, the present suit was filed by the plaintiff in collusion with defendant No.3 since the suit property had become more valuable

after explanation in the property prices. Further defendants No.1 and 2 were bona fide purchasers for consideration, without notice. Further, suit property was neither ancestral nor it belonged to any Hindu undivided family, and, thus, the plaintiff had merely concocted a false story.

On a consideration of the matter in issue and the evidence on record, the Courts below found that the property, that, indeed was transferred pursuant to a decree dated 18.09.1993, in favour of the plaintiff was altogether different than the suit property. It was observed that the dimensions of the property that was a subject matter of the suit filed by the plaintiff against his father, revealed that the suit property was not the subject matter of the Civil Suit No.509 of 1993. Still further, nothing was brought on record to prove that the suit property in the hands of defendant No.3 was ancestral and coparcenary. Concededly, pursuant to the decree dated 18.09.1993, the suit property was never mutated in the name of the plaintiff. So much so, plaintiff testified in his statement that the dispute arose after the suit property was sold in favour of defendants No.1 and 2, meaning thereby, plaintiff was fully aware of the execution of the sale deed dated 28.06.1994. Still further, nothing was brought on record to show that pursuant to any family settlement, he had acquired title in the suit property. Nothing was brought on record to prove the alleged family settlement. That being so, it was concluded that the sale deed dated 28.06.1994, having been executed in favour of defendants No.1 and 2, institution of the present suit on 17.11.2001, was barred by time. Still further,

defendant No.3 had sold many other shops in favour of different persons vide sale deed Ex.D3 to Ex.D7, which were duly proved by Kuldeep Singh, registration clerk-DW7. And as observed by the first appellate Court, those sale deeds were never questioned by the plaintiff Manoj Kumar. Still further, the plea of the plaintiff that father of the plaintiff i.e.Ishwar Singh had inherited the land comprised in khewat Nos.85,86 and 98, on the death of his father Ram Singh, but nothing was brought on record to prove that the shop in question was constructed over any portion of the land comprised in the said numbers. So much so, plaintiff never got the shop in question demarcated by praying for appointment of a local commissioner. Resultantly, the suit and, thereafter, even the appeal that was preferred by the plaintiff was dismissed.

I have heard learned counsel for the appellants and perused the RSA paper book.

Learned counsel for the appellant 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 thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Needless to assert, for the plaintiff to be entitled to a declaration prayed for, he was required to substantiate that the suit property was indeed a subject matter of Civil Suit No.509 of 1993,

filed by the plaintiff against his father Ishwar Singh-defendant No.3.

On a due and comprehensive consideration and the evidence on record, both the Courts concurrently recorded that the boundaries of the property that formed subject matter of the decree dated 18.09.1993(Ex.P3) was altogether different than the suit property. Boundaries of the property as depicted in the judgement and decree dated 18.09.1993 (Ex.P2 and Ex.P3) did not tally with the boundaries of the shop, as set out in the headnote of the plaint, as well as the sale deed dated 28.06.1994 (Ex.P1). So much so, the site plan (Ex.D2) appended with Ex.D1 completely vitiated the claim of the plaintiff. Still further, an analysis of the judgement and decree dated 18.09.1993 (Ex.P2 and Ex.P3) revealed that the suit property that was the subject matter of the said suit, was a vacant land, whereas, the suit property was comprised in an area measuring 22.2 sq.yards upon which a shop in question was constructed. That being so, it was rightly concluded by both the Courts below that had the shop in question formed part of the property, that was the subject matter of Civil Suit No.509 of 1993, there would have been a specific reference thereto in the decree dated 18.09.1993. So much so, Ashok Kumar-DW2, testified that the shop in question was constructed by Ishwar Singh and was let out to him by Ishwar Singh, much before the year 1994. And, it was thereafter, Ishwar Singh had sold the suit property to defendants No.1 and 2, pursuant to the sale deed dated 28.06.1994. That being so, there could hardly be any doubt that Ishwar Singh-defendant No.3 was the absolute owner of the suit property. Concededly, the sale deed was executed by father of the

plaintiff i.e.defendant No.3 on 28.06.1994 in favour of defendants No.1 and 2. Plaintiff conceded in his testimony that the dispute arose immediately on the alienation of the suit property, in favour of the plaintiff. Thus, the institution of the present suit, after over seven years, by the plaintiff, was clearly barred by time.

Learned counsel for the appellant 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.

06.02.2015

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(ARUN PALLI)
JUDGE