

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.3439 of 2011 (O & M)

Date of Decision: September 29, 2015

Rakesh Kumar

..... APPELLANT

VERSUS

Hem Chand & others

..... RESPONDENTS

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. P.R. Yadav, Advocate, for the appellant.

Mr. Kulbhushan Sharma, Advocate, for respondent
Nos.1 and 2.

. . .

Jaspal Singh, J

1. The instant appeal has been preferred by Rakesh Kumar son of late Smt. Maya Devi (wife of Pawan Kumar, plaintiff) against judgments and decrees dated October 30, 2009 and January 13, 2011 passed by the courts below whereby suit originally filed by Pawan Kumar and lateron pursued by his wife Smt. Maya Devi through legal representatives, has been dismissed.

2. Plaintiff(s) filed a suit for declaration and permanent injunction with the prayer for declaring the plaintiff as owner and in possession to the extent of 1/15th share of suit land, detailed in para no.1 of the plaint. Further that, judgment and decree dated January 6, 2001 passed in favour of defendants in Civil Suit No.13 of January 6, 2001 by the Civil Judge (Junior Division), Faridabad, regarding 1/15th share of plaintiff in the suit land and mutation No.1591 dated May 21, 2005 sanctioned on the basis of said judgment & decree by the revenue authorities are illegal, null & void, ineffective and not binding upon the rights of plaintiff(s) and do not confer any title upon the defendants and are liable to be set aside. Plaintiff(s) also prayed that defendants be restrained from alienating the suit land to anybody else in any manner and from creating any charge over the same illegally and unlawfully and from interfering into the peaceful possession of the plaintiff(s) qua the suit land and from ousting the plaintiff(s) from the suit land illegally and by show of force.

3. The suit was contested by the defendants by filing written statement. From the pleadings of parties, the following issues were framed:-

1. Whether the plaintiff is the owner and in possession to the extent of 1/15th share of the suit lands stated in para no.1 of the plaint? OPP
2. Whether the impugned judgment and decree dt. 6.1.2001 and mutation no. 1591 dt. 21.5.05 regarding the 1/15th share of the plaintiff in the suit lands are illegal, null and void and is not binding upon the rights of the plaintiff and liable to be set aside? OPP

3. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiff has no locus-standi and no cause of action to file the present suit? OPD
6. Whether the suit is time barred? OPD
7. Whether the Civil Court has no jurisdiction to entertain and try the present suit? OPD
8. Relief.

4. After hearing learned counsel for the parties and perusing the material available on file, the suit filed by the plaintiff(s) was dismissed vide judgment & decree dated October 30, 2009, against which, an appeal filed by the plaintiff(s) also failed and dismissed vide judgment & decree dated January 13, 2001 passed by the lower appellate court, whereby the findings recorded by the lower court have been affirmed and upheld.

5. Aggrieved by the aforesaid judgments & decrees rendered by the courts below, Rakesh Kumar son of Pawan Kumar (plaintiff) has approached this Court through the instant regular second appeal.

6. While challenging impugned judgments and decrees passed by both the courts below, it has been argued with vehemence by learned counsel for the appellant that the same are absolutely against the settled cannons of law and the evidence available on file. Misappreciation of evidence as well as the legal proposition applicable to the facts and circumstances of the instant case has resulted into

miscarriage of justice. The findings recorded by both the courts below are entirely based upon conjectures, surmises and presumption.

7. Admittedly, appellant-Maya Devi since deceased was the real daughter of Bhagwat Dayal, who has since expired during the pendency of the litigation and owner in possession to the extent of 1/15th share of the land in suit. She survived by Rakesh Kumar and others, who have been brought on record. Neither, Maya Devi appeared in any Court nor any statement in the Court to either relinquish her share in the suit property or to get the consent decree passed. Thus, the civil court decree dated January 06, 2001 as well as mutation sanctioned on its basis are absolutely wrong and against the actual facts. The entire evidence adduced by the appellant before the trial Court has been brushed aside by both the courts below without assigning any cogent reason. In fact, defendants/respondents got obtained her thumb impression on blank papers, which was converted into use by them, as per their convenience. Thus, impugned judgment and decree dated January 06, 2001 passed in civil suit No. 13 being a result of fraud and mis-representation is not sustainable in the eyes of law and deserve to be set aside.

8. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the appellant and have scrutinized the impugned judgments and decrees but find the same to be of no legal weight, especially in view of the evidence available on file and the legal proposition applicable to the facts and circumstances of the case in hand.

9. By now it is pretty settled that fraud and misrepresentation are not only required to be pleaded by a party but the parties also obliged to establish the same by leading cogent and convincing evidence. Through this *lis*, appellant has challenged the decree dated January 06, 2001 Ex.P-2 on the basis of fraud and misrepresentation alleged to have been exercised upon her. But to the utter surprise, except this bald assertion of Rakesh Kumar and Pawan Kumar, PW-1 and PW-2 respectively, there is no other evidence. Their assertion is not sufficient to discard the judgment and decree passed by learned lower Court and upheld by Appellate Court. No instance or substance has been pointed out as to how the fraud has been exercised upon the appellant by any of the defendants. It would be pertinent to mention here that apart from the appellant Maya Devi, her sister Shiksha was also a party to the civil suit No. 13 dated January 6, 2001 captioned as Hem Chand and others vs. Maya Devi and others. In the said case Shiksha appeared as DW-2 and made a categorical deposition to the effect that family settlement was arrived at amongst the co-sharers on October 26, 1998 Ex.PW-4/A. It was only on the basis of the said family settlement, the suit has been decreed vide judgment and decree dated January 06, 2001, which has been challenged through the instant appeal. Not only this a perusal of impugned judgment dated January 06, 2001 Ex.P1 as well as decree Ex.P2 reveal that Ms. Maya Devi-appellant has been represented by Mr. Ashwani Trikha, Advocate in the said suit. She also made a statement Ex.DW-4/A, which bears her thumb impression. In such a situation a story put forward by appellant that her signatures were

obtained on a blank paper, which has been converted into use at a subsequent time falls to the ground. Rather, this Court is of the considered view that statement was made by Ms. Maya Devi at her own accord voluntarily and without any coercion or pressure but subsequently for the reasons best known to her, the suit challenging the judgment and decree was instituted. It appears that some differences have accrued at a subsequent stage after the passing of decree which have led to the instant *lis*.

10. In the light of what has been discussed above, this court does not find any infirmity, illegality or impropriety in the impugned judgments and decrees. Rather the same are absolutely in consonance with the evidence available on record and settled cannons of law. There is no question of law much less any substantial question of law involved in this appeal. Thus, finding no justification, instant appeal is dismissed. However leaving the parties to bear their own cost.

(JASPAL SINGH)
JUDGE

September 29, 2015
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