

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3244 of 2012 (O&M)
Date of Decision.29.10.2015

Ramesh and others

.....Appellants

Versus

Santosh and another

.....Respondents

Present: Mr. Dalel Singh Nain, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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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K. KANNAN J. (ORAL)

1. Delay of 857 days in refiling the appeal is condoned.
2. The plaintiff is the appellant. The plaintiff's suit for declaration and injunction was on a claim that the 2nd defendant had fraudulently suffered a decree in favour of the husband of the 1st defendant in the year 1994 and the decree is not binding on the plaintiff. The contention was that the 2nd defendant who was the paternal uncle had no right to admit to the title of the 1st defendant's husband when 1st defendant's husband did not have any pre-existing right in the property. The trial Court held that the plaintiff had not proved his own right to the property and unless the plaintiff also had an interest which could not have been given by the 2nd defendant in favour of the 1st defendant's husband by independent source of title or by establishing that it was an ancestral prooperty, the declaratory action ought to fail.

The Court also found that the suit instituted in the year 1994 on the

basis of which a decree was passed could not have been subject of challenge 10 years later and found that the suit was also barred by time. At the Appellate Court, the plaintiff sought to produce documentary evidence purporting to prove the ancestral character of property but the Court found that no justification had been given for non-production of the document and for reception of the documents filed as additional evidence. Accordingly, the Appellate Court confirmed the judgment of the trial Court.

3. In second appeal, the plaintiff would reiterate the contentions that raised in the Courts below that if the 1st defendant's husband did not have a pre-existing right in the property, he could not have obtained right to the property by virtue of a collusive decree obtained against the 2nd defendant. While I accede to the legal position that a decree cannot constitute a transfer of right in the property and it can only declare the existing right, I must observe that the plaintiff himself will be disqualified from making any claim to the property or challenging the decree unless he is able to show that he had an interest in the property which was wrongly given by the 2nd defendant in favour of the 1st defendant's husband. The plaintiff could not show his own title to the property and the attempt of producing the additional evidence in appeal failed for his inability to prove the justification for non-production at the trial Court. I will not find that there is any particular error in the judgment of the Appellate Court for a reversal in the second appeal. The plaintiff lost the case by his inability to prove his own title and that decision would require to be confirmed, for there is nothing independently brought before the trial Court or the Appellate

Court that the plaintiffs had a right to the property and they were in enjoyment of the same to assail the decree passed in favour of the 1st defendant's husband.

4. I do not find any error for reappreciation in the second appeal. The second appeal is dismissed as involving no substantial question of law.

(K. KANNAN)
JUDGE

October 29, 2015
Pankaj*