

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3348 of 2012(O&M)
Date of decision: 12.10.2015

Imami

... Appellant

Versus

Hanif and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. CB Goel, Advocate, for the appellant.

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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 19.11.2010. As even the appeal preferred against the said decree failed and was dismissed vide judgment dated 08.02.2012, plaintiff is before this court vide this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiff, he claimed that he along with defendants No.20 & 24 to 28 were co-owners/co-sharers in possession of the suit land to the extent of $\frac{1}{2}$ share, pursuant to the judgment and decree dated 28.08.1957. It was maintained that the judgment and decree dated 28.08.1957 was legal and binding on the parties and

had since attained finality. Therefore, the sale deed, dated 06.02.1986, executed by Isab, father of defendants No.14 & 15, in favour of defendants No.16 to 19, and all subsequent sale deeds, as also the entries recorded in the revenue record, were wholly null and void. As the property that was alienated by Isab, father of defendants No.14 & 15, was more than his share, thus, the said sale deed, was unsustainable.

In defence, contesting defendants No.29 to 42 and 47 to 51 pleaded, inter alia, that they were bona fide purchasers for a valuable consideration. And, the matter in issue had since already been resolved by a civil court in a suit filed by the plaintiff and others against the defendants, wherein the sale deed dated 06.02.1986 was held to be valid. Further, defendants were also held to be the bona fide purchasers for consideration without notice. In support of their defence, defendants relied upon the judgment and decree dated 09.06.1997 as also the judgment rendered by the appellate court on 19.01.2000.

On a due and thoughtful consideration of the matter in issue, and the evidence on record, the courts below concurrently concluded that there was no dispute as regards the legality of the decree dated 28.08.1957. However, the relief claimed by the plaintiff could not be awarded without examining the validity of the sale deeds in question. The first sale deed in point of time was executed by Isab, father of

defendants No.14 & 15, on 06.02.1986, in favour of defendants No.16 to 19. The other sale deeds except sale deed 23.10.1989, pertained to the same land that was sold vide sale deed dated 06.02.1986. An analysis of the judgment and decree dated 09.06.1997 revealed that the sale deed dated 06.02.1986 and all subsequent alienations were questioned by the plaintiff in the said suit, as they were alleged to be null, void and nonest. However, the said suit, filed by the plaintiff, was dismissed. And so was the fate of the appeal, preferred against the said decree. Further, in the said proceedings, the appellate court observed that the vendees could not be presumed to have any knowledge qua the decree dated 28.08.1957, as that was, concededly, not reflected in the record of rights till the sale deeds were executed. In other words, the revenue record continued to reflect defendant No.7 to be the owner of 1/3rd share in the suit land. Therefore, there could hardly be any presumption of knowledge on the part of the defendants as regards the decree dated 28.08.1957. Needless to assert, the said decree was only a judgment in personam and thus defendants No.8 to 11 could not be presumed to have any notice thereof. Thus, could not be deprived of the valuable rights they had acquired pursuant to the sale deeds executed in their favour. Concededly, the judgment and decree dated 09.06.1997 had since attained finality. As the contesting defendants were found to be in

possession of the suit land, ever since they acquired title therein, the suit filed by the plaintiff was held to be devoid of any cause of action. Nothing was brought on record either to show that plaintiff was ever in possession of the suit property. Still further, the issue whether the suit in question was barred by time, it was recorded that the plaintiff had assailed the sale deeds executed during the period w.e.f. 1986 to 1993. All the sale deeds were registered instruments and the period of limitation to assail the same was three years. The present suit was filed by the plaintiff on 07.03.2008, assailing the sale deed dated 06.02.1986, that was executed first in point of time. Thus, institution of the present suit after execution of the sale deed dated 06.02.1986, was apparently barred by time. Insofar as the issue; whether the suit in hand was barred by the principle of res judicata, it was concluded that as even in an earlier suit, filed by the plaintiff, as regards the suit property against the defendants, the sale deeds in question, were also in dispute, therefore, the present suit was barred by the principle of res judicata.

Learned counsel for the appellant could not point out as to how the conclusions that had concurrently been arrived at by both the courts below were either contrary to the position on record or suffered from any material illegality. The only submission that has been advanced by the learned counsel; that the validity of the sale deeds in question was not

directly and substantially in issue in the previous suit filed by the plaintiff, ex facie, cannot be countenanced. Concededly, in a previous suit filed by the plaintiff, he had specifically questioned the validity and veracity of the sale deeds in question. But whether their validity was examined or not; was of no consequence as both the courts concluded that in the wake of Explanation IV to Section 11 of the Code of Civil Procedure, any matter which might and ought to have been made a ground of defence or attack in the earlier suit, shall be deemed to have been a matter directly and substantially in issue in the said suit. And not just that, as concluded, in the decree dated 09.06.1997, the contesting defendants had even been held to be the bona fide purchasers for consideration.

In the wake of the position as set above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is accordingly dismissed.

October 12, 2015
Rajan

(Arun Palli)
Judge