

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 2531 of 2013 (O&M)

Date of decision:- 20.03.2015

Sheela Rani

...Appellant

Versus

Kailash Rani and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Gaurav Gupta, Advocate
for the appellant.

RITU BAHRI J.

This regular second appeal is directed against the judgment and decree dated 11.02.2013 passed by the learned Addl. District Judge Sirsa whereby the appeal filed against the judgment and decree dated 18.01.2001 passed by learned Addl. Civil Judge, Senior Divn. Sirsa, was dismissed, vide which the suit for declaration filed by the plaintiffs-respondents (for short 'the respondents') was decreed.

The respondents filed a suit against the defendants including the present appellant on the allegations that Rinku and Sushil Kumar are the sons and Kailash Rani (respondent No. 1 in the present appeal) is the widow of Shri. Sohan Lal (since deceased) was the owner in possession of the house bearing Municipal Unit No. 72, situated in E-Block, Sirsa consisting of two rooms, two store, three kitchens, courtyard, Bathroom and boundary walls

fitted with electric connection and water connection constructed on Plot no. 72/13/1 (area 2250 square feet i.e 75' X 30'). Sohan Lal died on 20.01.1992 and, the plaintiffs-respondents inherited the house in question to the extent of 1/7th share, being legal heirs of Ved Prakash son of Shri Sohan Lal, who pre-deceased on 11.11.1991. Sohan Lal died on 20.01.1992 without leaving any will etc. He left large number of moveable and immovable properties including the house in question. The pedigree table showing the relationship between the parties is as under:-

Piara Ram
/
/
Sohan Lal

Lal Chand Sahab Ram, Ved Prakash, Kailash, Suresh Rani

(Defendants sons) / Proforma-defendants

/
1. Sushil 2. Rinku sons (plaintiffs)

Kailash (widow)

Plaintiffs-respondents being the heirs of Ved Prakash pre-deceased son of Shri Sohan Lal along with other heirs i.e defendant Nos. 1, 2, 3 and proforma-defendants inherited the suit property to the extent of 1/7th share each. The defendants obtained the judgment and decree dated 05.03.1992 in a civil suit titled as Lal Chand v. Sahab Ram on the basis of fraud and mis-representation. In the said civil suit, Sahab Ram transferred 1/2nd share in favour of his wife

Sheela Rani and 1/4th share each in favour of Lal Chand and Gulshan Rai-defendants. Sahab Ram was neither owner nor in the exclusive possession of the property in question. He had no right to suffer any such decree in favour of his wife and Lal Chand as well as Gulshan Rai. The plaintiffs case was that this decree was not binding upon the rights of the plaintiffs, as Sohan Lal died on 20.01.1992 without leaving any will.

The defendant Nos. 1 and 2 appeared and filed their joint written statement and have taken certain preliminary objections regarding maintainability, locus standi; estoppel; suppression of true and material facts. However, the relationship between the parties was admitted. In the decree dated 05.03.1992, the plaintiffs have no right to the suit property.

Defendant No. 4 filed a separate written statement and contended that the impugned decree was valid and binding on the rights of the plaintiffs, as the same was based on the will and wishes of deceased Sohan Lal and, therefore, could not be challenged by anybody including plaintiffs. Defendant Nos. 5 to 7 have admitted the claim of the plaintiffs to the effect that Sahab Ram was not competent to suffer any decree.

The trial Court after going through the entire evidence led by the parties held that the plaintiffs had

succeeded to prove the case by oral as well as documentary evidence, as per sale deed dated 25.02.1972 Ex P1. Sohan Lal has purchased the property in question from Kewal Krishan and thus become the owner in possession of the property in question by the dint of the sale deed dated 25.02.1972. Sohan Lal died on 05.03.1992 and vide judgment and decree dated 05.03.1992 (Ex P2 and P3), Sahab Ram transferred the land in favour of defendant Nos. 1, 2 and 4, who was not absolute owner of the property at the time of suffering of decree dated 05.03.1992. Hence, the judgment and decree were not binding upon the rights of the plaintiffs. The defendants did not place on record any family settlement which goes to show this fact that Sohan Lal gave his consent and wish to Sahab Ram to transfer the land in favour of defendant Nos. 1, 2 and 4 by the dint of judgment and decree Ex P2 and Ex P3. Thus, the suit of the plaintiffs was decreed, vide judgment dated 18.01.2011 and it was held that the defendant Nos. 1, 2 and 4 had committed fraud in collusion with each other with the plaintiff by procuring the decree Ex P2 and P3 respectively.

The appeal filed by the present appellant against the impugned judgment dated 18.01.2011, which was dismissed.

Both the Courts below have given a concurrent finding that after the death of Sohan Lal on 20.01.1992,

Sahan Ram proceeded to get the impugned judgment and decree in favour of his wife, Lal Chand as well as Gulshan Rai, which was in accordance with the last wishes of Sohan Lal. No will was produced in the Court, as stated to be executed by Sohan Lal. The plaintiffs were not impleaded as party in the decree dated 05.03.1992 Ex P-2. The decree came to the knowledge of plaintiffs-respondents on 10.04.2007 and on 16.04.2007, when the defendants-appellants refused to admit their claim, they filed the suit on 19.04.2007 against the impugned decree, which was within limitation. Moreover, the plaintiffs were not made a party in the impugned judgment dated 05.03.1992. Hence, it was held that the suit was within limitation.

In the absence of any evidence led before the trial Court as well as before the lower Appellate Court that there was any will of late Sohan Lal, who died on 20.01.1992 according to which he had transferred the said land in favour of defendant Nos. 1, 2 and 4, the judgment passed by both the Courts below has attained finality and does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

March 20, 2015
G Arora

(RITU BAHRI)
JUDGE