

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

RSA No. 1011 of 2015 (O&M)

Date of decision : 20.5.2015

* * * * *

Kehar Singh

.....Appellant

Versus

Union of India and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. Aman Pal, Advocate for the appellant.

* * * * *

1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

The plaintiff-appellant (hereinafter referred to as 'the plaintiff') has come up in this regular second appeal against the judgment dated 18.1.2012 passed by Additional Civil Judge (Senior Division), Fatehabad whereby the suit of the plaintiff for declaration and permanent injunction was dismissed and the judgment dated 19.12.2014 passed by the Additional District Judge, Fatehabad, whereby an appeal against the judgment of the trial Court was dismissed.

Plaintiff-Kehar Singh on the basis of agreement Ex. P-5 has challenged judgment and decree Ex. P-27 and P-28, document Ex. D1 filed in case No.46-C of 2002 and sale deed Ex. D-9 with

consequential relief of permanent injunction restraining defendants no. 3 to 6 from taking utility connections from the concerned departments.

Briefly, the facts of the suit are that Nand Singh Puri (since deceased), who was represented by the defendants nos. 9 to 12 put the plaintiff into vacant possession of disputed plot no.68 after having received total consideration of Rs. 16,000/- by way of agreement to sell Ex. P-5. The plaintiff after getting the site plan passed from MC, Fatehabad got constructed a house over the disputed plot by taking loan from Sarvodya House Building Cooperative Society Limited Fatehabad. The plaintiff also obtained electricity and sewerage connections qua the disputed plot. His name is further depicted in the house tax assessment register maintained by defendant no.6. As per jamabandi for the year 2003-04, Rehabilitation Department, Maftka Arasi Billa Allotshuda was the owner of the land. The disputed plot is part of khasra No.373 measuring 66 kanals & 8 marlas. Defendant no.3 filed a civil suit bearing No.46-C/02 against general public and MC, Fatehabad and obtained judgment and decree Ex. P-27 and P-28 by procuring false statement from PW-1, Satbir Singh and thereafter defendant no.3 on the basis of impugned judgment and decree executed a sale deed Ex. D-9 in favour of defendant no.5 who further executed sale deed Ex. D-10 in favour of defendant no.14. The above sale deeds have been assailed in the civil suit.

On notice, defendants no 1 & 2 contested the suit on the

ground that disputed plot No.68 was part of khasra No. 373 measuring 66 kanals and 18 marlas gair mumkin johar which owned by matruka arazi billa allotshuda. The disputed plot had never been auctioned or allotted by the defendants in favour of either plaintiff or defendants no. 3 to 12.

Defendants no. 3 to 4 contested the suit by denying legality and validity of agreement dated 31.1.1985 in favour of the plaintiff. These defendants have claimed to become owner of the disputed plot by virtue of judgment Ex. P-31 and decree Ex. P-32 passed in case No. 231/88 whereby Risal Singh and Nand Singh Puri have exchanged their lands. Though the plaintiff had challenged judgment and decree Ex. P-31 and P-32 by filing civil suit No. 314-C/96 but, thereafter got his case dismissed as withdrawn. Possession of the plaintiff was denied over the disputed plot.

Defendants no. 5 to 6 have contested the suit and submitted that defendants no. 3 & 4 were owners in possession of the disputed property which they sold to the answering defendants through sale deed Ex. D-9 and they further executed a sale deed Ex. D-10 in favour of defendants no. 14.

Defendant no. 14 contested the suit and on merits pleaded doctrine of bona fide purchaser for valuable consideration by way of sale deed No. 4294 dated 2.1.2009.

Following issues were framed by the trial Court:

- 1. Whether the judgment and decree dated 24.9.2005 and sale deed bearing registration no.*

- 2174 dated 22.8.2008 (Ex. D1) based on impugned judgment and decree dated 24.9.2005 is liable to be declared illegal, null and void? OPP*
- 2. Whether the plaintiff is in possession of the suit property? OPP*
- 3. Whether the suit is bad for want of notice under Section 80 CPC? OPD*
- 3-A. Whether the suit is time barred? OPD*
- 3-B. Whether the suit is barred by principle of res judicata? OPD*
- 4. Whether the suit is not maintainable? OPD*

The plaintiff had challenged impugned judgment and decree Ex. P-27 & P-28 on the ground that Satbir Singh an employee of MC, Fatehabd had appeared as DW-1 in suit No. 46-C/02 and made a false statement in the Court which was primary basis of impugned judgment and decree. DW-1 in that case had brought copy of Misc. demand Collection Register Ex. D-1 whereby disputed plot No. 68 has been shown to have been allotted to Nand Singh for Rs.600/-. Ex. D-1 was not produced by the plaintiff in the Court as this was the main document on the basis of which a finding could be returned that the statement made by Satbir Singh was false. Hence the trial Court held that plaintiff was disentitled to ask for declaration

Risal Singh (since deceased) who was represented by defendants no. 3 & 4 had filed a civil suit bearing no. 231 on

30.3.1988 wherein judgment Ex. P-31 and decree Ex. P-32 was passed in favour of Risal Singh on the basis of exchange of land with the defendant Nand Singh Puri. The plaintiff had filed a civil suit bearing no. 314-C on 22.8.1996 against Risal Singh and others including MC, Fatehabad challenging the judgment and decree Ex. P-31 & P-32 but afterwards the said suit was got dismissed as withdrawn vide order Ex. D-13 without obtaining permission of the Court to file fresh suit on the same cause of action. After withdrawing the suit, the plaintiff deemed to have forfeited his rights flowing from impugned agreement Ex. P-5. By withdrawing the suit, the plaintiff have accepted the exchange made by his vendor with the predecessor of the defendants no. 3 & 4. Judgment and decree P-27 and P-28 were passed on the statement made by Satbir Singh that the disputed land had been allotted for Rs. 600/-. The judgment and decree Ex. P-31 and P-32 were the basis for passing judgment Ex. P-27 and decree Ex. P-28.

The plaintiff has taken mutually contradictory and destructive pleas except recital in the impugned agreement. The trial Court, thereafter, proceeded to examine P-5 whether it was a valid deed executed in favour of the plaintiff. The plaintiff while appearing in the witness box as PW-4 admitted that suit for specific performance was not filed on the basis of agreement to sell. It was claimed that Ex. P-5 was duly registered document but the trial Court found that it did not find endorsement of the Registrar on the backside of this document. As far as execution and passing of

consideration qua the agreement Ex. P-5 are concerned, the trial court found that except the recital in impugned agreement the plaintiff did not lead evidence of his possession over the disputed plot.

The plaintiff is having another plot adjacent to the plot in question on its southern side. He had produced all the documents to get the suit land recorded in his name in the municipal records by using the title of his other plot. This fact was duly proved from the evidence on file. While taking utility services from the concerned departments, the plaintiff submitted sale deed Ex. D1 and its mutation Ex. D-2, but these documents pertain to plot of 7 marlas comprised in khasra no. 105//24/2/1. The plaintiff had made an attempt to merge the disputed property with plot no.7 on which he has constructed the house. No utility connection was given by the Public Health Department for the plot in dispute in favour of the plaintiff. As per the deposition of Rajender Clerk from Public Health Department since the plaintiff did not furnish any proof of title, so, no water and electricity connection was issued for the plot in dispute in his favour. The official from the Municipal Committee, Fatehabad namely Harish Kumar while appearing as PW-10 in his cross examination stated that documents Ex. D-1 to Ex. D3 were furnished by the plaintiff to them for getting sanctioned site plan Ex. PW-10/B and his name incorporated in the house tax register. The said documents do not pertain to the plot in dispute but rather relate to some other land of the plaintiff purchased by him from one Subhash Chander son of Atma Ram. The above said documents in relation to

electricity connection, water connection only reflect that the plaintiff had made an attempt to show that he had possession over the plot in dispute. However, the plot in dispute was subject matter of exchange between Risal Singh and Nand Singh Puri which was finalised by judgment and decree dated P-27 and P-28 and the suit filed by the plaintiff challenging the said compromise was withdrawn. In the absence of any evidence with regard to the possession, the suit of mandatory injunction could not have been decreed. There is no infirmity or illegality in the judgments passed by the trial Court and the appellate court and they do not require any interference.

No substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

20.5.2015
ritu

(**RITU BAHRI**)
JUDGE