

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**RSA No. 1720 of 2014 (O&M)
Date of decision : 27.01.2015**

Sandeep Kumar

.....Appellant

Versus

Jatender Mahajan and another

...Respondents

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of the 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 ?

Present: Mr. N.D. Achint, Advocate
for the appellant

Mr. Sanjay Vij, Advocate
for respondent No. 1

ANITA CHAUDHRY, J.

C.M. No. 4215-C of 2014

Learned counsel for the appellant seeks permission to withdraw the present application.

Application is dismissed as withdrawn.

R.S.A. No. 1720 of 2014

This appeal is directed against the judgment dated 30.03.2013 passed by the trial Court and the judgment dated 15.10.2013 passed by Additional District Judge, Gurgaon affirming the decree of the Lower Court.

It is unfortunate that the Courts are being burdened with

unnecessary litigations like the present one. The facts are interesting. Sandeep Kumar son of Manbir Singh filed a suit for declaration and permanent injunction claiming half share in 67 kanals of land situated in village Bhondsi, Tehsil Sohna, District Gurgaon. He claimed that the property was ancestral and he had right in it by birth. He had pleaded that a family settlement had taken place in 1986-87 and a decree was passed in the suit filed by him decided on 16.12.1988. Pursuant to that decree a mutation was sanctioned in his favour. The plaintiff further pleaded that he was minor at the time of filing of the suit and the suit had been filed through his uncle being his guardian. His claim was that he was in possession of the property since date of decree i.e. 16.12.1998.

The case of the plaintiff further was that he had come to know that the land had been purchased by the defendant and a decree for specific performance had been passed in his favour in the suit filed by Jatender Mahajan- defendant No. 1. The plaintiff made enquiries and came to know that the suit had been filed using a forged agreement. It was pleaded that the decree for specific performance had been passed without his knowledge and notice and it was not binding upon him and decree dated 16.12.1988 was not hit by principle of lis-pendens.

Asserting his right, the plaintiff pleaded that the land was ancestral and there was no legal necessity and the land could not have been sold. The suit was filed by the plaintiff after attaining majority on 17.08.2004. The suit was contested by defendant No. 1.

A plea was raised that the true facts had been concealed from the

Court. It was pleaded that defendant No. 2 – Manbir Singh was the owner and he had entered into an agreement with him on 30.11.1987 and advance money was paid and the sale deed was to be registered by 15.03.1988 after obtaining the income tax clearance and no encumbrance certificate from the Bank. Defendant No. 1 sent a notice to defendant No. 2 but he failed to appear before the Registrar and later he (defendant No. 1) filed a suit for specific performance in 1988 and a decree was passed on 01.09.1994. Aggrieved by the judgment, an appeal was preferred in which an application under Order 6 Rule 17 CPC was filed alleging that the property was ancestral but that plea was turned down and the application was dismissed and the appeal was also dismissed on 05.02.2000. An appeal was preferred in the High Court which was dismissed on 16.11.2000. It was pleaded that while the litigation was going on, defendant No. 2 suffered a decree in favour of his son and later after dismissal of the appeal by the High Court, the suit was instituted. It was pleaded that the decree was bogus and had been suffered to cause wrongful loss to him.

Defendant No. 2 appeared and filed a written statement and pleaded that the agreement was forged. Later he failed to appear and was proceeded ex-parte.

The trial Court framed issues and both the parties led evidence. The plaintiff failed to prove that the property was ancestral and it was held that the plaintiff had no pre-existing right and the land had already been sold and the decree for specific performance had been passed. The suit was held to be barred by limitation. The

appeal filed by the plaintiff was also dismissed by the Additional District Judge and the findings were affirmed. There was a categorical finding that the suit property was not ancestral property.

Still dissatisfied with the judgment the plaintiff is here in appeal. A feeble attempt was made to press the prayer made for additional evidence to establish the ancestral nature of the land but the counsel withdrew the application at the very outset.

There is a categorical finding that the land was not ancestral property. The plaintiff had miserably failed to prove the issue. The father of the plaintiff had entered into an agreement to sell the land but failed to fulfill his part. A suit for specific performance was filed. Manbir Singh had taken a plea that agreement was forged but failed to prove it and a decree for specific performance was passed. Having failed in the first Court, Manbir Singh filed an application seeking amendment in his written statement and raise the plea that the land was ancestral. The lower Appellate Court turned down the prayer. The amendment in the written statement was not allowed. The decree for specific performance in the suit filed by Manbir Singh attained finality when the RSA filed by Manbir Singh was dismissed in the year 2000. Seven years later the son again filed a suit asserting his right in the property on the plea that the property was ancestral and the agreement was forged. All these issues were examined and decided against Manbir Singh. For the son to agitate the issues again clearly is a case of misuse of the process of the Court.

There is absolutely no merit in the appeal. There is no substantial question which requires any further engagement. We are constrained to hold that the plaintiff and his father have not only wasted the time of the Court but also of the contesting defendant in a false and frivolous litigation with the sheer motive of greed.

The appeal is dismissed.

27.01.2015

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(ANITA CHAUDHRY)
JUDGE