

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.M. No. 10926-C of 2015&
RSA No. 4553 of 2015 (O&M)

Date of Decision: 29.10.2015

Sanjeet

.....APPELLANT

VERSUS

Amandeep and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. Sunil Chadha, Sr. Advocate,
with Mr. Chetan Bansal, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J

In this appeal, the appellant-defendant has challenged the judgment and decree passed by the Additional District Judge, Rohtak dated 15.05.2015, by which the appeal preferred by the respondents-plaintiff challenging the judgment and decree dated 29.03.2012 passed by the Civil Judge (Junior Division), Rohtak dismissing suit for declaration to the effect that the sale deed No. 3198 dated 29.06.2009 and the subsequent mutations as illegal, null and void and that the plaintiff along with defendants No. 3 and 4, namely, Sandeep and Narender respectively are owners-in-possession of the suit property and the permanent injunction restraining the appellant-defendant No. 2 and respondent No. 2-defendant No. 1 from alienating the suit property, was allowed.

2. It is the contention of the learned senior counsel for the

appellant that the suit preferred by respondent No. 1-plaintiff was not maintainable as the challenge to the sale deed dated 29.06.2009 was dependent upon the decision of the suit filed by respondent No. 2-defendant No.1-Sarbati challenging the judgment and decree passed in case titled Narender and others vs. Bharte and others, decided on 01.12.1993. He contends that the ownership of the respondents-plaintiff was under cloud as the suit was pending of Sarbati, therefore, the trial Court has rightly dismissed the suit of the respondents-plaintiff as not maintainable. He has relied upon the judgment of the Supreme Court in the case of **Nand Kishore Marwah vs. Smt. Samundri Devi**, 1987 (2) R.C.R. (Rent) 412 and **Mohnnakumaran Nair vs. Vijayakumaran Nair**, 2008 (1) R.C.R. (Civil) 21. Counsel, thus, contends that the impugned judgments and decree cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned senior counsel for the appellant and with his assistance, have gone through the judgments passed by the Courts below.

4. Briefly, the facts of the case are that the predecessor-in-interest of the plaintiff and defendants No. 1, 3 and 4 was Bharte @ Bharti. He had three sons, namely, Chander Singh, Balbir Singh and Ram Kishan. Chander Singh died issueless leaving behind his widow Sarbati-defendant No. 1. Ram Kishan was married to Kamlesh. Ram Kishan died issueless. After the death of Ram Kishan, Kamlesh performed *Kareva* marriage with Balbir Singh and out of this wedlock, plaintiff and defendants No. 3 and 4 were born.

5. Bharti suffered a Civil Court decree in favour of the plaintiff and defendants No. 3 and 4 on 01.12.1993 in the case Narender and others

vs. Bharte and others but the mutation could not be entered into. Defendant No. 1-Sarbati challenged the validity of the decree dated 01.12.1993 and obtained an ex-parte decree on 16.08.2001, by virtue of which, judgment and decree dated 01.12.1993 was set aside. An application under Order 9 Rule 13 of the Code of Civil Procedure was preferred by the plaintiff along with defendants No. 3 and 4, which was accepted vide order dated 20.03.2009 setting aside the ex-parte judgment and decree dated 16.08.2001. The result thereof was that the original suit was restored.

6. After the passing of the order dated 20.03.2009 and during the pendency of the original suit, which was restored, defendant No. 1-Sarbati executed a sale deed No. 3198 dated 29.06.2009 in favour of the appellant-defendant No. 2. It is this sale deed, which was challenged by respondent No. 1-plaintiff-Amandeep by way of the suit. The Civil Judge (Junior Division), Rohtak had dismissed the suit on 29.03.2012 holding that the validity of the impugned sale deed would be dependent upon the decision to be given finally in the case filed by defendant No. 1-Sarbati challenging the validity of the consent decree dated 01.12.1993 and, therefore, the suit was not maintainable. The appeal preferred by respondent No. 1-plaintiff was allowed by the learned Additional District Judge, Rohtak on 15.05.2015. This appeal has thus been filed by appellant-defendant No. 2.

7. The facts, as narrated above, are not in dispute and the sequence of the events itself is the answer to the arguments, which have been raised by the learned senior counsel for the appellant. It is not in dispute that the ex-parte judgment and decree dated 16.08.2001 in favour of Sarbati was set aside on acceptance of the application filed under Order 9 Rule 13 of the Code of Civil Procedure filed by respondents No.1-plaintiff

and defendants No. 3 and 4 on 20.03.2009. The effect thereof was that the suit filed by Sarbati, challenging the validity of the Civil Court judgment and decree dated 01.12.1993 was restored and continued and so was the ownership of the plaintiff along with defendants No. 3 and 4 restored or in other words not taken away. In fact, the judgment dated 16.08.2001, which declared Sarbati as owner of 1/3rd share in the suit property was set aside, meaning thereby that the declaration in her favour about she being the owner was set aside. Sarbati, w.e.f. 20.03.2009, was not competent to sell the suit property as it belonged to the plaintiff and defendants No. 3 and 4 by virtue of judgment and decree dated 01.12.1993 in their favour. Merely because the judgment and decree dated 01.12.1993 was under challenge on the date when Sarbati, at her behest, executed the sale deed dated 29.06.2009 in favour of the appellant-defendant No. 2, the same did not confer any title on her. Sarbati, thus, was not competent to execute the sale deed dated 29.06.2009 and, therefore, the validity of the said sale deed could be put to challenge by respondent No. 1-plaintiff as Sarbati had no right, title or interest in the suit property on the said date.

8. That apart, the sale deed dated 29.06.2009 will also be hit by the doctrine of lis-pendence as the same was executed during the pendency of the suit. It may be added here that the suit preferred by Sarbati challenging the decree dated 01.12.1993 stands dismissed and the appeal preferred against the same has also been dismissed, which has attained finality, which fact is not under dispute.

9. The judgments, on which reliance has been placed by the learned counsel for the appellant i.e. **Nand Kishore Marwah (supra)** and **Mohnnakumaran Nair (supra)**, were based on different facts and

circumstances and the principles enunciated therein would not be applicable to the case in hand in the light of the observations, which have been made above.

10. In view of the above, the impugned judgment and decree passed by the Additional District Judge, Rohtak dated 15.05.2015 is upheld as the same has been passed on proper appreciation of the pleadings and the evidence produced by the parties. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court, therefore, the present appeal stands dismissed.

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In the light of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

October 29, 2015

pj