

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.1881 of 2014 (O&M)

.....

Date of decision:8.7.2015

Kiran Manocha

.....Appellant

v.

Janak Dulari and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Adarsh Jain, Advocate for the appellant.

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Inderjit Singh, J.

This regular second appeal has been filed by Kiran Manocha against Janak Dulari, Mukesh alias Malkeet (LRs. of deceased Man Singh) and Sardari Lal-defendants/respondents and Asha Khurana and Nirmal Dogra-plaintiffs/proforma respondents challenging the impugned judgment and decree dated 29.3.2011 passed by the learned Additional Civil Judge (Senior Division), Faridabad and the impugned judgment and decree dated 8.7.2013 passed by the learned Additional District Judge, Faridabad in the appeal.

Learned counsel for the appellant at the time of arguments argued that the conveyance deed issued in favour of Smt. Ram Kaur on 19.8.1961 by Assistant Commissioner Settlement Commission-cum-

Managing Officer, Faridabad registered in the office of Sub Registrar Ballabgarh is null and void and against the law. No oral relinquishment can be made by the predecessor of the plaintiffs. He further argued that the consent decree executed by defendant No.2 in favour of defendant No.1 is also a result of fraud, illegal, not registered and null and void.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that Ms. Kiran Manocha, Smt. Asha Khurana and Smt. Nirmal Dogra filed the suit against Man Singh and Sardari Lal for cancellation of the judgment and decree dated 6.3.1999 passed in declaratory suit No.737 of 1998 by the learned Civil Judge (Junior Division), Faridabad and also for permanent injunction restraining the alienation. As per plaintiffs' case earlier Hari Chand was allotted the property/House No.5-L/41, NIT, Faridabad in lieu of the property left in Pakistan. After the death of Hari Chand, his widow Ram Kaur moved an application before the Settlement Commissioner. Hari Chand had died leaving behind his widow Ram Kaur and three sons, namely, Guljari Lal Manocha, Sardari Lal and Man Singh. The plaintiffs are the legal representatives of Guljari Lal. The conveyance deed was issued in the name of Ram Kaur vide letter dated 19.8.1961, which was duly registered. It is also stated that father of the plaintiffs, namely, Guljari Lal expired on 15.11.1986 and mother of the plaintiffs also expired on 27.4.1998. It is also stated that after the death of plaintiffs' mother, defendants No.1 and 2 in collusion with each other had filed a suit for declaration wherein defendant

No.1 had claimed ownership of house in dispute, which was decreed on 6.3.1999. The decree was obtained by defendants fraudulently and concealing material facts and is liable to be cancelled.

The case of the defendants on the other hand is that the house in question was allotted in the name of Hari Chand, but the same was allotted in lieu of his self-acquired property left by him in Pakistan. It is denied that the father of the plaintiffs has any right in the property in dispute. Defendant No.1 was minor at the time of death of his father and Shri Guljari Lal father of the plaintiffs made a statement with his free will after the death of his father thereby relinquishing his right in the property in dispute in favour of his mother Ram Kaur. He made this statement before the Settlement Commissioner. Defendant No.2 also made the same statement before Settlement Commissioner and defendant No.2 also relinquished his right in favour of his mother Ram Kaur. It is also stated that house No.550, Sector 7-B was purchased by Guljari Lal with the money given by Ram Kaur which fact has been duly mentioned in the Will dated 26.3.1991 executed by Smt. Ram Kaur. By virtue of the said Will, defendants No.1 and 2 became the owners of the property in dispute. Defendant No.2 later on relinquished his share in the suit property in favour of defendant No.1 as per the judgment and decree dated 6.3.1999.

Both the parties led the evidence. The learned Additional Civil Judge (Senior Division), Faridabad vide judgment and decree dated 29.3.2011 dismissed the suit of the plaintiffs.

An appeal was filed by Kiran Manocha, one of the plaintiffs.

The appeal was also dismissed vide judgment and decree dated 8.7.2013 by the learned Additional District Judge, Faridabad. Aggrieved from the impugned judgment and decree the present regular second appeal has been filed.

A perusal of the record shows that firstly the findings given by both the Courts below are concurrent. Nothing has been argued as to which evidence has been misread by the Courts and which evidence has not been appreciated in right perspective. There is also nothing on record to show that the judgments and decrees passed by the Courts below are perverse. Learned counsel for the appellant at the time of arguments has not challenged the Will executed by Smt. Ram Kaur in favour of defendants No.1 and 2. He argued that he is not challenging the Will. The learned counsel has argued only regarding the conveyance deed and regarding the judgment and decree. If Smt. Ram Kaur is held as owner on the basis of conveyance deed and the Will executed by Ram Kaur in favour of defendants No.1 and 2 is not challenged, then the plaintiff/appellant has no right to challenge the judgment and decree dated 6.3.1999, which was suffered by defendant No.2 in favour of defendant No.1. Defendant No.2 is not challenging the decree that it has been obtained by result of fraud etc. from him nor it has been challenged within the limitation period. So, this judgment and decree between defendant No.2 and defendant No.1 has become final and the plaintiff/appellant, who is not a party to the decree cannot challenge the same. The plaintiffs can only challenge the judgment and decree and the Will if they firstly challenge the conveyance deed which

was issued in favour of Smt. Ram Kaur in the year 1961. The suit has been filed in the year 2001 i.e. after 40 years of issuance of the conveyance deed. The plaintiff nowhere either in the head note of the plaint or in the prayer clause asked for the relief of declaring this conveyance deed as null and void. He is only asking for cancellation of judgment and decree dated 6.3.1999 and for permanent injunction restraining the defendants from alienating the property. As conveyance deed has not been challenged, which was issued in favour of Ram Kaur in the year 1961 nor there is any issue on this fact, therefore, now in the regular second appeal he cannot argue that the conveyance deed is null and void. He has nowhere prayed to set aside that conveyance deed. Otherwise also, I do not find any ground for setting aside the conveyance deed as the plaintiffs' father has not challenged the conveyance deed, who had relinquished his share at that time, within the limitation period. Now, even if it is taken that the plaintiffs are challenging the conveyance deed, the suit is time barred.

Therefore, from the above discussion, I find that the findings given by the Courts below are correct and as per law which do not require any interference from this Court and the same are upheld. No substantial question of law arises in this regular second appeal.

Finding no merit in the regular second appeal, the same is dismissed.

July 8, 2015.

(Inderjit Singh)
Judge

hsp