

In the High Court of Punjab and Haryana at Chandigarh

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CM Nos.29-C and 6074-C of 2014

and

R.S.A. No.3 of 2014 (O&M)

.....

Date of decision:20.5.2015

Balwant

.....Appellant

v.

Parveen and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rahul Mohd., Advocate for the appellant.

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Inderjit Singh, J.

CM No.29-C of 2014:

For the reasons mentioned in the civil miscellaneous application, documents Annexures-A/1 to A/5 are taken on record subject to all just exceptions.

The civil miscellaneous application stands disposed of.

CM No.6074-C of 2014:

For the reasons mentioned in the civil miscellaneous application, the delay of 624 days in re-filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

R.S.A. No.3 of 2014 (O&M):

This regular second appeal has been filed by Balwant-appellant/plaintiff against Parveen Kumar and Bharpai-respondents/defendants and Ramovtar and others-proforma respondent/defendants aggrieved against the impugned judgment and decree dated 24.7.2010 passed by the learned Additional Civil Judge (Senior Division), Jhajjar, vide which the suit filed by the plaintiff has been dismissed and against the impugned judgment and decree dated 29.11.2011 passed by the learned District Judge, Jhajjar, vide which the appeal filed by appellant-plaintiff has been dismissed.

The brief facts of the case are that Balwant-plaintiff filed a suit against Dhanpati and Bharpai-defendants and Ramovtar-proforma defendants for declaration on the allegations that mutation No.1697 registered on 5.12.1948 and sanctioned on 19.5.1949 came into existence regarding inheritance of Maha Devi widow of Ramji Lal in favour of Mange Ram and the plaintiff and proforma-defendants No.3 to 8 are legal representatives of said Mange Ram. The property in question is ancestral property of the plaintiff. After the death of Mange Ram, the plaintiff and defendants No.3 to 8 became owners in possession of land and Ami Lal was husband of defendant No.1 Dhanpati and he in collusion with officials of Revenue Department succeeded to enter one mutation No.33 regarding land measuring 13 Bighas 9 Biswas fraudulently and by misrepresentation in his favour without the knowledge of Mange Ram.

In the written statement, the case of the defendants is that suit is not maintainable, barred by limitation and no cause of action arisen. It is

stated that mutation No.1697 dated 5.12.1948, sanctioned on 19.5.1949 regarding Khata No.33 in the name of Ami Lal is correct. Ami Lal purchased total land measuring 13 Bighas 9 Biswas against the amount of ₹1600/- from Ramji Lal and one mutation No.1518 was incorporated in this regard and the plaintiff has no right to challenge the same and prayed for dismissal of the suit of the plaintiff.

Both the parties produced the evidence. After appreciating the evidence, the learned Additional Civil Judge (Senior Division), Jhajjar, dismissed the suit of the plaintiff. Aggrieved against this judgment and decree, an appeal was filed, which has been dismissed by the learned District Judge, Jhajjar, vide judgment and decree dated 29.11.2011. Aggrieved against the impugned judgments and decrees passed by the Courts below, the present regular second appeal has been filed by Balwant-appellant/plaintiff.

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

From the record, I find that the findings of Courts below are concurrent and based on evidence while correctly appreciating the evidence. No substantial question of law arises in this appeal. The main dispute is regarding the mutation, which was sanctioned in favour of Ami Lal in the year 1949. The plaintiff had filed the suit in the year 2003 i.e. after more than 60 years. There is nothing on the record as to why this sale deed as well as the mutation, which was entered on the basis of sale deed about 60 years back, have not been challenged by the predecessor of the plaintiff.

The possession as argued is also with Ami Lal and his successors. The learned counsel for the appellant at the time of arguments brought it to my notice document Annexure.A/2. As per this document, even Mange Ram stated in the general meeting that Maha Devi was aunt, who had died and he is only her heir. Land is under possession of Ami Lal. He is brother of Bharpai in relation of Maha Devi, who acquired some land from Maha Devi as a gift. He also stated that as per Annexure-A/2, it is nowhere written that the land was devolved in his name. It means that Mange Ram was knowing on 19.5.1949 that mutation had been sanctioned in favour of Ami Lal and he was in possession over the property. Nothing has been argued when the cause of action arose to the plaintiff. There is nothing on record to show as to how this suit is within limitation. It is argued that Ramji had died on 27.1.1944 and the suit property has been stated to be purchased on 21.2.1944.

After going through the findings of the learned Additional Civil Judge (Senior Division), I find that the lower Court has held that there is no cogent documentary evidence on record to prove the death of Ramji Lal on 27.1.1944. Document Mark-A has not been proved by bringing the Pandit, who was maintaining the record regarding last cremation ceremonies.

On the other hand, the defendants relied upon the death certificate Ex.D.2/A of said Ramji Lal showing his date of death as 27.4.1955.

The findings given by the Courts below are on the basis of evidence are correct and have been returned while appreciating the evidence

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in right perspective. In no way, it can be held that the findings are against the evidence. There is nothing on the record that the Courts below have misread any evidence. The findings recorded in the impugned judgments and decrees passed by the Courts below do not require any interference from this Court and the same are upheld. Otherwise also, no substantial question of law arises in this regular second appeal.

Therefore, finding no merit in this regular second appeal, the same is dismissed.

May 20, 2015.

(Inderjit Singh)
Judge

hsp