

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4016 of 2014 (O&M)
Decided on:-10.03.2015.

Ram Kumar

.....Appellant.

Versus

Om Parkash and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Present:- Mr. Sant Lal Barwala, Advocate
for the appellant.

Dr. Bharat Bhushan Parsoon, J (Oral)

This is regular second appeal by Ram Kumar one of the plaintiffs (now appellant), is directed against judgment and decree dated 07.10.2013 passed by the lower court as also of 31.03.2014 passed by the first Appellate Court below.

2. The appellant/plaintiff and three others with him, had filed a suit seeking a decree of declaration to the effect that they alongwith proforma defendants were owners of the suit land and further that judgment and decree dated 05.05.2006 passed in case No.125 HM by the then Assistant Collector 1st Grade, Siwani and subsequent mutation no.2574, were illegal, null and void and were not binding upon the rights of the plaintiffs and of proforma defendants.

3. The said suit was dismissed under Order XVII Rule 3 CPC vide

judgment and decree dated 01.06.2011 by the lower court. In appeal preferred by two of the plaintiffs (including the present appellant) against the said judgment and decree of 01.06.2011, the first Appellate Court vide its judgment dated 17.07.2013 setting aside the impugned judgment and decree of the lower court, had remanded the civil suit to the lower court with a direction to decide issues no.2 to 8 afresh as per law.

4. Before further discussion is made on the claim of the appellant/plaintiff, it would be appropriate to detail the issues on which the parties had gone for adjudication. Issues were framed by the lower court on 05.10.2010. Those are as under:-

- a. Whether the plaintiff is entitled for decree for declaration to the effect that they and proforma defendants are owner of the suit property on the ground taken in the plaint?OPP
- b. Whether judgment and decree dated 05.05.2006 passed in civil suit no.125 HM. Om Prakesh Vs. Dallu Ram etc. passed by Sh. Pankaj Chaudhary, Assitt. Collector Ist Grade, Siwani is illegal, null and void?OPP
- c. Whether the mutation no.2574 sanctioned on the basis of above mentioned judgment and decree is illegal, null and void?OPP
- d. Whether the suit is false, frivolous and against the law?OPD
- e. Whether the suit is not maintainable in the present form?OPD
- f. Whether the plaintiff has no cause of action or locus standi to file the present suit?OPD
- g. Whether the suit of plaintiff is bad for mis-joinder and non-joinder of necessary parties?OPD

- h. Whether the proper court fee has not been affixed?OPD
- i. Relief.

Despite several opportunities availed by the plaintiffs including the appellant-plaintiff, no evidence was produced by them and consequently, their evidence was closed on 26.04.2011. Defendants had also concluded their evidence without leading any on 01.06.2011.

5. Following directions of the first Appellate Court, the lower court in its impugned judgment of 07.10.2013 dismissed claim of the plaintiffs and came to a conclusion that there was neither oral nor documentary evidence to sustain or support the claim of the plaintiffs. Even judgment and decree dated 05.05.2006 passed by Assistant Collector 1st Grade, Siwani as also mutation no.2574, which had been challenged in the suit, had not been produced in evidence. It was rightly commented upon by the lower court that pleadings can not take place of proof and to sustain their claim, the plaintiffs were required to produce their evidence, which alone could steer clear their ship through the storms. Discussing factual matrix as also the attending circumstances in the interface of the law on the point, fresh decision was rendered by the lower court on issues no.2 to 8 in terms of order dated 04.08.2011 of the Appellate Authority.

6. Consequently finding neither substance nor merit in the pleas of the plaintiffs, their suit was dismissed on 07.10.2013. This judgment and decree of the lower court during first appeal, has been evaluated at length. The Appellate Court rightly concurred with the lower court and finding no substance in the claim of the plaintiffs, dismissed the appeal on 31.03.2014.

7. When called upon, notwithstanding the fact of mentioning many 'questions of law' in para 6 of the ground of appeal, learned counsel

for the appellant has not been able to satisfy this Court about existence of any substantial question of law needing determination by this Court in terms of Section 100 CPC. Requirement is not of existence of 'question of law' but is of existence of 'substantial question of law'.

8. Merely because of non appearance of the defendants resulting in exparte proceedings against them, if the Court was required to proceed under Order 17 Rule 2 CPC but mention has been made of Order 17 Rule 3 CPC, it does not change the legal horoscope of the case of the appellant particularly when there is neither merit nor substance nor any substantial question of law requiring determination by this Court.

9. Sequelly, in absence of any substantial question of law needing adjudication by this Court, affirming the impugned judgments and decrees of the courts below, this regular second appeal is dismissed in liminie.

(Dr. Bharat Bhushan Parsoon)
Judge

March 10, 2015
prince rana