

**IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH**

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R.S.A No. 4758 of 2014

Decided on : February 05, 2015

Pahalwan Chand

... Appellant

Versus

Kahan Chand & Ors.

... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. B.S.Mittal, Advocate, for the appellant.

Mahavir S. Chauhan, J. (Oral)

Under challenge in this regular second appeal is judgment/decreed dated 27.05.2014, whereby learned Additional District Judge, Sirsa, ('first appellate Court' – for short) has affirmed judgment/decreed dated 05.12.2012, passed by the learned Additional Civil Judge (Senior Division), Sirsa ('trial Court' – for short), whereby suit of the appellant to seek declaration of ownership of suit land and recovery of its possession was dismissed being hit by the provisions of Rule 2 Order 2 of the Code of Civil Procedure, 1908 ('C.P.C' – for short)

I have heard learned counsel for the appellant.

It is strenuously argued by learned counsel for the appellant that decree dated 19.08.2000 was not in existence when the suit was filed and as such it cannot be said that cause of action to challenge that decree was available to the appellant when he filed the suit and, even otherwise, the

courts below have committed an error of law while dismissing appellant's suit under Rule 2 Order 2, C.P.C without affording an opportunity to lead evidence to the appellant.

Nothing more has been urged.

Case of the appellant before the Courts below was for declaration that he is owner of the suit land. It was alleged by him that he had great trust in his brother Sher Chand, who expired on 24.01.1999 leaving behind defendants No. 1 to 6, as his legal heirs. Before his death, Sher Chand took possession of the suit land from him forcibly. When he (the appellant) inquired from the revenue record, it came out that the land was exchanged by his said brother with land measuring 16 kanals and 19 marlas in village Mangala and the appellant was not a party to that exchange. Mutation No. 1846 based on that exchange was illegal as proper procedure was not observed. He also came to know that defendant No.8 had obtained a Civil Court decree dated 19.08.2000 in respect of a part of the suit land and as such that decree was also not binding upon him.

Written statement was filed on behalf of defendants/appellants No. 4 to 7, wherein a preliminary objection regarding maintainability of the suit was adverted to as the suit according to them was hit by Rule 2 Order 2, C.P.C. as the previously instituted suit (Suit No. 255 of 1999/2000) was withdrawn by the appellant on 06.04.2004 without obtaining leave of the court to institute a fresh suit on the same cause of action. Allegations of the plaintiff were also denied.

After framing issues learned trial Court treated the issue

regarding maintainability of the suit as preliminary issue and afforded an opportunity of hearing to the parties. Ultimately, learned trial Court came to the conclusion that the earlier suit instituted by the appellant was withdrawn by him on 06.04.2004 and liberty to institute a fresh suit was not obtained. Incidentally when that suit was withdrawn decree dated 19.08.2000 was in existence and, as such, to make a challenge to that decree cause of action was available to the appellant when the earlier suit was withdrawn by him. Accordingly, appellant's suit was dismissed. He failed in appeal also.

It is not in dispute that the earlier suit (No.255 of 1999/2000) brought by the appellant for declaration pertaining to the land in suit was dismissed as withdrawn vide order dated 06.04.2004. Liberty to institute a fresh suit on the same cause of action was neither prayed for nor granted by the Court. It is also not in dispute that judgment/decreed dated 19.08.2000 was in existence and in the knowledge of the appellant when the aforesaid suit was withdrawn by him. It is also beyond dispute that to make a challenge to judgment/decreed dated 19.08.2000 the plaintiff could be amended suitably, but it was not done for reasons best known to the appellant.

In view of these circumstances, no evidence was necessary to dispose of the issue based on the bar of Rule 2 of Order 2, C.P.C. Also, the contention that cause of action to challenge judgment/decreed dated 19.08.2000 was not available to the appellant when the suit was filed is untenable because even if the judgment/decreed dated 19.08.2000 came into being after institution of the suit, cause of action was available to the

appellant on 06.04.2004 when the earlier suit was dismissed as withdrawn and as aforesaid, the appellant did not take steps to amend the plaint to make a challenge to the aforesaid judgment/decreed.

In view of the above, I do not find any illegality or irregularity in the findings recorded by the Courts below.

Dismissed.

No costs.

February 05, 2015
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[Mahavir S. Chauhan]
Judge