

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

RSA No. 4786 of 2014 (O&M)

Date of Decision: December 01, 2015

Budh Ram

.... Appellant

vs.

Phool Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Ashish Gupta, Advocate for
Mr. Arvind Kumar Yadav, Advocate for the appellant.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

CM-11244-C-2014

There is delay of 48 days in filing the present appeal.

For the reasons mentioned in the application, supported by an affidavit, delay of 48 days in filing the present appeal is condoned, subject to all just exceptions.

Application stands disposed of.

RSA No.4786 of 2014

Impugned in the present regular second appeal is the judgment and decree dated 26.02.2014 passed by learned Addl. District Judge, Rewari, affirming the judgment and decree dated 09.12.2010 passed by learned Civil Judge (Sr. Divn.), Rewari, whereby the suit of the plaintiff for declaration and permanent injunction was dismissed.

The case of the plaintiff before the lower court was that Muni Lal, grandfather of the plaintiff had purchased the disputed property vide sale deed dated 03.03.1972 out of the funds supplied by his father Banwari Lal (since deceased). Muni Lal suffered a decree in favour of his two sons, namely, Phool Singh and Chiranji Lal on 31.03.1989 . The claim of the plaintiff is that the decree requires compulsory registration and that the plaintiff is entitled to succeed his grandfather to the extent of 1/3rd share. It was claimed that the suit has been filed after 15 years as earlier the plaintiff was minor and it is only after attaining majority, he came to know about the consent decree and filed the suit.

On the other hand, the contesting defendants denied the claim of the plaintiff that the disputed property was purchased from the funds raised by the father of the plaintiff. They affirmed that the decree is legal and valid.

However, in the replication, the plaintiff asserted another ground that Muni Lal had inherited certain sheep and goats from his forefathers and after selling the said sheep and goats, the disputed property was purchased by his grandfather Muni Lal. Therefore, being coparcener he was having legal right in the suit property as one of a co-sharer.

From the pleadings, following issues were framed:

“ 1. Whether the plaintiff and proforma defendant No.3 and 4 are owners and in possession of the disputed land and impugned judgment and decree dated 31.3.1989 and mutation no.770 are wrong

illegal, null and void and not binding on the rights of the plaintiff and proforma defendants no.3 and 4 and, therefore, liable to be set aside?OPP

2. In case plaintiff failed to prove his case whether he is entitled for the alternative decree for the ownership of the 1/3rd share of the disputed land described at para no.3 of the plaint?OPP

3. Whether suit of the plaintiff is not maintainable in the present form?OPD

4. Whether the plaintiff has no locus standi to file the present suit?OPD

5. Whether the plaintiff is estopped by his own act and conduct to file the present suit?OPD

6. Whether the suit of the plaintiff is time barred?OPD

7. Relief.”

The lower court held that the decree did not require registration and has been validly passed. It was also held that the plaintiff is neither the owner nor in possession of the disputed property. The suit for simplicitor declaration without seeking possession would not be competent. Consequently, issue Nos.3, 4 and 5 were decided against the plaintiff. While deciding issue no.6, it was held that the suit is time barred. Accordingly, the suit was dismissed. The judgment passed by the lower court was affirmed in appeal.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

First of all, the plaintiff is required to prove the locus standi to file the suit. It is not disputed that Muni Lal died somewhere

in 1999 i.e. 10 years after the passing of the decree. During his life time, Muni Lal did not challenge the correctness of the decree. It is further stated that Banwari Lal, father of the plaintiff, predecessor of Muni Lal and other family members, mother of the plaintiff Smt. Vidya Devi and sister Smt. Renu Devi, who are proforma defendants did not challenge the decree on any ground.

In the plaint, the plaintiff had taken the plea that the suit property was purchased by his grandfather Muni Lal out of the joint funds supplied by his father Banwari Lal. Whereas, in the replication, it was pleaded that the suit property was purchased by Muni Lal by selling the sheep and goats, inherited from his forefathers. However, specific number of sheep and goats were not given to make out that the value of the sheep and goats is sufficiently equal to the value of suit property purchased by Muni Lal. The plaintiff failed to prove that his father had supplied funds to Muni Lal to purchase the suit property or the suit property was in any way purchased from anything supplied/inherited from his forefathers. Therefore, the suit property is self acquired property of Muni Lal. Muni Lal has suffered a decree. The plaintiff has no locus standi to challenge the said decree as only Muni Lal, who had suffered the decree could challenge the decree. The plaintiff failed to prove the locus standi and has no vested right to challenge the decree. In order to hold that the suit property does not require registration, the lower court has relied upon the authority of ***“Bachan Singh vs Kartar Singh and others 2002 HRR 226,*** delivered by Hon'ble the Apex Court.

Learned counsel for the appellant has placed reliance upon the authority of Hon'ble the Supreme Court in case of ***“Phool Patti and another vs Ram Singh (Dead) through LRs. and another”***, **2015(1) R.C.R. (Civil) 606** and has pressed that in case of transfer of self acquired property by a consent decree, registration is must.

A perusal of the impugned judgment shows that it was a case of gift by way of transfer in favour of his nephews. Here a decree is passed in favour of his surviving sons, who are otherwise natural successors. Therefore, the said authority cannot be made applicable to the facts of the present case. There are concurrent findings of facts recorded by both the courts below. No substantial question of law arises in the present appeal.

Hence, the present regular second appeal stands dismissed.

December 01, 2015
sarita

(KULDIP SINGH)
JUDGE