

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5357 of 2014
Date of decision: 03.12.2015

Rati Ram

... Appellant

Versus

Jai Bhagwan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Anil Kumar, Advocate for the appellant.

1. Whether reporters of local papers 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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 10.04.2012. As even an appeal preferred against the said decree failed and was dismissed vide judgment dated 20.02.2014, plaintiff is before this court vide this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiff, he prayed for a declaration that decree dated 30.03.1996, passed in Civil Suit No.103 dated 06.02.1996, titled Budh Ram etc. v. Prabhati Lal etc., and mutation dated 23.07.1996, that was sanctioned on the basis of the said decree, were wholly illegal and void to the extent of 1/3rd share of the plaintiff in the suit property. A

decree for injunction was also claimed, restraining the defendants from alienating the suit property or raising any construction thereon. Briefly, the case set out in the plaint was that plaintiff Rati Ram did not have cordial relations with his wife Shanty Devi. And, therefore, she in collusion with his brother Parkash made him suffer a decree dated 30.03.1996, in favour of his minor sons, namely, Jai Bhagwan and Jitender. In fact, plaintiff was told by his brother Parkash that he was suffering a decree in favour of his own sons and the presence of the plaintiff was required only as a witness. He never appeared in Civil Suit No.103 dated 06.02.1996, in which the decree in question was passed.

In defence, it was pleaded, inter alia, by defendant No.1 that plaintiff and his brother gave up their rights in Civil Suit No.103 dated 06.02.1996. And, consequently, the decree dated 30.03.1996 was passed. Resultantly, defendant had become the owner in possession to the extent of 1/6th share in the suit land.

In a separate written statement filed by defendants No.2 to 4, a similar stand was set out and it was maintained that the plaintiff had indeed suffered a decree dated 30.03.1996.

On an analysis of the matter in issue and the evidence on record, both the courts had concurrently

concluded that the plaintiff indeed suffered a decree in favour of defendant No.1, and husband of defendant No.2 and the father of defendants No.3 & 4. The written statement filed by plaintiff Rati Ram in the said suit was proved on record as Ex.P2. Not just that, he had even suffered a statement in court that he had filed the admitted written statement. Copy of the said statement was also proved on record as Ex.DW4/2. Pursuant to the decree dated 30.03.1996, mutation No.448 (Ex.P4) was also sanctioned in favour of the sons of the plaintiff, namely, Jai Bhagwan and Jitender. Consequently, the affect thereof was carried out in the subsequent jamabandis. Although, while appearing as his own witness, plaintiff (PW2), denied to have engaged any counsel or signed the written statement (Ex.P2), but defendants examined Sh. Attar Singh Yadav, Advocate, as DW4, who testified that he was indeed engaged as counsel by the defendants in the said suit. He had read over and explained the averments set out in the written statement to the defendants. He got the statement of plaintiff recorded on 28.02.1996 and he even thumb marked/signed the said statement. In fact, in the cross-examination of Attar Singh Yadav, Advocate, (DW4), he was suggested that Rati Ram never paid any fee to him, which contradicted the claim of the plaintiff, as on the one hand he had completely denied to have engaged any counsel or

appeared in Civil Suit No.103 dated 06.02.1996. Although, plaintiff had claimed himself to be in actual physical possession of the suit property but nothing was brought on record, least any cogent or credible evidence, to show that he was in actual physical possession of the suit land. That being so, it was concluded that a simple suit for declaration, without claiming a consequential relief was not maintainable. Not just that, the decree in question was suffered by the plaintiff as back as on 30.03.1996, whereas he had preferred the present suit after over twelve years. Accordingly, it was concluded that the plaintiff was not entitled to the declaration prayed for that the decree dated 30.03.1996 was null and void and not binding upon his rights. The plea that the plaintiff was made to suffer a decree dated 30.03.1996 and a fraud was played upon him remained unsubstantiated for lack of cogent evidence.

Learned counsel for the appellant could not point out as to how the conclusions that had concurrently been recorded by both the courts were either contrary to the position on record or suffered from any material illegality. No other argument was advanced.

In the wake of the position as set above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No question of law, much less

any substantial question of law, arises for consideration.

Appeal being devoid of merit is accordingly dismissed.

December 3, 2015
Rajan

(Arun Palli)
Judge