

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

R.S.A. No. 5464 of 2014 (O&M)

Date of decision:- 27.05.2015

Ashok Kumar and another

...Appellants

Versus

Tarlok Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. S.S. Swaich, Advocate
for the appellants

Mr. S.K. Mahajan, Advocate
for the caveator/respondent No. 4.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

This regular second appeal is directed against the concurrent findings of facts recorded by both the Courts below whereby the suit of the plaintiffs-appellants (herein after to be referred as 'the appellants') was dismissed.

Brief facts of the case put forth by the appellants is that Dhari Ram was the original owner of the property in dispute. Dhari Ram was married with Gian Dai @ Dhan Dai and she was her legally

wedded wife and from their wedlock, one female child namely Raj Kumari, mother of the appellants was born. However, Dhuri Ram had also kept Pritam Kaur in his house illegally as a concubine. Thereafter, Dhari Ram had executed a valid and registered will dated 30.08.1977 bequeathing his entire property in favour of his legally wedded wife namely Gian Dai alias Dhan Dai and in the will it was specified that if Gian Dia alias Dhan Dai expired, then the suit property would automatically devolve upon his daughter namely Raj Kumar whereas Dhari Ram had given right of residence to Pritam Kaur till her death. Dhari Ram died on 13.10.1985 whereas Pritam Kaur died in the year 1994 and after death of Dhari Ram, his registered will dated 30.08.1977 became operative and the suit property devolve upon his widow Gian Dai @ Dhan Dai and after her death, suit property devolved upon Smt. Raj Kumari. The right of residence given to Pritam Kaur came to an end with her death in the year 1994. The mutation of inheritance was also sanctioned in the name of Raj Kumari being daughter and only legal heir of Dhari Ram and Gian Dai and she became owner of the suit property and sold the same to the appellants vide registered sale deed dated 25.08.1997 and delivered the physical possession of the same. Thereafter, Pritam Kaur obtained an ex parte decree dated 24.05.1991 in a suit No 127 dated 26.11.1989

passed by the Court of the then learned Sub Judge, Amritsar by way of fraud and the same was not binding upon the rights of the appellants and was liable to be set aside. The appellants had been living at Faridabad and when they visited Amritsar they saw respondent No. 4 in possession of the property in dispute. On inquiry, they came to know that Pritam Kaur had illegally and unlawfully sold the property in dispute on the basis of sale deed dated 26.02.1992 in favour of respondent Nos. 1 to 3, who further sold the property in dispute to respondent No. 4, vide sale deed dated 11.08.1993, whereas both the sale deeds were illegal, ultra vires, null and void.

From the pleading of the parties, following issues were framed by the trial Court:-

“1. Whether the plaintiffs are owners of the house in dispute? OPP

2. Whether the plaintiffs are entitled to the declaration as prayed for? OPP

3. Whether the plaintiffs are entitled to the possession of the property in dispute as claimed? OPP

4. Whether the sale deed dated 26.02.1992 executed by Pritam Kaur in favour of defendant Nos. 1 to 3 and sale deed dated 11.08.1993 executed by defendant Nos. 1 to 3 in

favour of defendant No. 4 are illegal, null and void and

liable to be set aside? OPP

5. Whether the plaintiffs are entitled to the permanent injunction as prayed for? OPP

6. Whether the suit is maintainable in the present form?

OPP

7. Whether a cause of action has arisen to the plaintiff to file the present suit? OPP

8. Whether the suit has been properly valued for the purpose of jurisdiction and court fee? OPP

9. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

10. Whether the plaintiffs have not come to the Court with clean hands? OPD

11. Relief.”

The trial Court after going through the entire evidence led by the parties held that the plaintiffs had not led sufficient evidence to show that a fraud had been committed by Pritam Kaur in obtaining ex parte judgment and decree. Further the appellants had not challenged the said ex parte judgment and decree dated 24.05.1991, passed against them, either under Order 9 Rule 13 CPC or in appeal or under

any other provision of law. Thus, the said judgment and decree became final. This ex parte judgment and decree has been challenged in this suit on the ground that the same has been obtained by Pritam Kaur by playing fraud upon the Court but it has not been mentioned by the appellants either in the pleadings or in the evidence that how and what fraud was played by Pritam Kaur with the Court. Order 6 Rule 4 CPC is very clear that the appellants have to give all the detailed particulars of fraud, mis representation and breach of trust. Order 6 Rule 4 CPC reads as under:-

Particulars to be given where necessary.- In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with date and items if necessary) shall be stated in the pleading.

In fact the appellants had appeared in that suit along with their mother and filed written statement. Appellant Rakesh Kumar in his affidavit Ex PW8/A had submitted that the wrong address of the appellants was given by Pritam Kaur in that suit. On the other hand, appellants themselves produced the certified copy of the plaint of suit filed by Pritam Kaur, decided on 24.05.1991 (Ex PW6/1) and certified copy of written statement filed by the appellants themselves in the

said suit Ex PW6/2. Further, appellant Rakesh admitted in his cross examination that Pritam Kaur had filed a civil suit and they were served in that suit and they had engaged a lawyer in that suit and had also filed written statement. He further admitted that they had come to know this fact that the suit was decided in favour of Pritam Kaur

The ex parte judgment and decree was passed on 24.05.1991 and the present suit was filed challenging the said decree on 25.07.2000. Thus, the suit was held to be hopelessly time barred as regards the challenging of ex parte judgment and decree. Accordingly, the suit of the appellants was dismissed on 03.08.2011

On appeal, the Lower Appellate Court dismissed the appeal of the appellants and declared the sale deed dated 25.08.1997 as illegal, ultravires, null and void with no binding upon the rights of Pritam Kaur. The ex parte judgment and decree was never challenged by the appellants or Raj Kumari in any higher Court nor any application was moved before the said concerning Court. Thus, the ex parte judgment and decree become final.

A perusal of the ex parte judgment and decree further shows that Pritam Kaur had filed a suit against Raj Kumari and the present appellants and sought declaration to the effect that she was the owner in possession of the property bearing Khana Shumari No.

42/62/XVI-34, Khasra No. 1586 and 1620 min situated in Bazar No. 6 Abadi Kot Baba Deep Singh, Amritsar and the sale deed executed by Raj Kumari in favour of the present appellants and the mutation sanctioned in their favour on the basis of the said will are illegal, null and void. The appellants along with Raj Kumari appeared and filed their written statement and when the suit reached at the stage of evidence, they went absent and proceeded ex parte and thereafter, the ex parte judgment and decree was passed by giving relief that Pritam Kaur, being legal heir of Dhari Ram, had inherited the property in dispute and was the owner in possession of the suit property.

The judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, appeal is dismissed.

27.05.2015

G Arora

(**RITU BAHRI**)
JUDGE