

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

SAO No.8 of 2014

Date of decision: 27.1.2015

Chawli Devi

....Appellant

Versus

Prem Chand and another

...Respondents

ESA No.34 of 2014

Chawli Devi

....Appellant

Versus

Prem Chand and another

...Respondents

ESA No.35 of 2014

Chawli Devi

....Appellant

Versus

Naresh Kumar and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Arihant Jain, Advocate for the appellant.

Mr. Nonish Kumar, Advocate for respondent No.1.

Rakesh Kumar Jain, J. (Oral)

This order shall dispose of three appeals bearing SAO No.8 and ESA Nos.34 and 35 of 2014. SAO No.8 of 2014 is considered as first appeal and the facts are extracted from it.

In brief, respondent No.1 filed a suit for declaration that mutation No.13735 pertaining to inheritance of Sh.Juga in favour of Chawli Devi appellant and judgment and decree dated 3.5.1999 passed in civil suit titled as Chawli Devi Vs. Juga Ram are not binding upon the plaintiff, are illegal, null and void and are based upon fraud & concealment of facts, therefore, the same are liable to be set aside. Consequential relief of permanent injunction was also sought to restrain Chawli Devi from interfering into the possession of the plaintiff over the suit land.

On the pleadings of the parties, as many as six issues are framed, which are reproduced as under:

(i) Whether the impugned civil court decree dated 3.5.1999 alongwith mutation No.13735 sanctioned thereon are illegal and void and not binding upon the rights of the plaintiff? OPP.

1-a) Whether the sale deed dated 19.4.2005 executed by defendant No.1 Chawli in favour of defendant No.3 Gaze Singh during the pendency of the suit is illegal, null and void and liable to be set aside? OPP.

2) Whether the plaintiff is entitled to the relief of injunction as prayed for? OPP.

3) Whether the suit of the plaintiff is not maintainable nor the plaintiff to have locus standi to file and maintain the present suit? OPD.

4) Whether the suit of the plaintiff is barred by the period of

limitation in time? OPD.

5) Whether the present suit has not been properly valued for the purpose of court fee and jurisdiction? OPD.

6) Relief.

The trial Court discussed issues No.1 and 1-A together and decided both against the plaintiff. Other issues No.2, 3, 4 and 5 were ultimately decided and the suit was dismissed on 27.9.2010.

Aggrieved against the judgment and decree of the trial Court, the plaintiff filed first appeal and during its pendency, filed an application under Order 41 Rule 27 CPC in order to examine the scribe and witnesses of the sale deed.

The other two appeals, disposed of with the first Appeal, have arisen from the Objections filed by Prem Chand in the execution of the decree dated 3.5.1999 and were dismissed. The Miscellaneous appeals were also before the same Court who was seized of the appeal from which SAO No.8 of 2014 has arisen. The Appellate Court, while allowing the application for additional evidence, not only set aside the judgment and decree of the trial Court in the civil suit, but also set aside the order dismissing the Objections filed by respondent No.1 Prem Chand and Naresh Kumar though there was no application filed by him, for additional evidence.

Counsel for the appellant Chawli Devi has argued that the Appellate Court was not justified in remanding the case for *denovo* trial and should have asked for the report under Order 41 Rule 25 CPC or decided the application himself by examining the said witnesses if it has decided that the scribe and witnesses of the sale deeds of the plaintiff were required

to be examined. It is also submitted that no application was filed in the other two miscellaneous appeals and all the appeals have been allowed without setting aside the findings recorded by the trial Court on merits on other issues.

Counsel for the respondents, however, has submitted that suit was dismissed by the trial Court only on the ground that he had failed to prove sale deeds Ex.P9 and Ex.P10 in his favour by examining the witnesses of the sale deed and scribe. It is also submitted that additional evidence can be allowed by the Appellate Court if it is found that it is required for substantial cause.

After hearing the learned counsel for the parties and examining the record, I am of the considered opinion that order of the learned Appellate Court remanding the case to the trial Court for *denovo* trial, is erroneous. In case of remand, the Appellate Court is required to set aside the findings on other issues on merits but in the present case entire judgment of the trial Court has been set aside without touching findings given on the other issues on merits only on the ground that plaintiff has failed to examine scribe and the attesting witnesses of the sale deeds on which he relies upon. In such circumstances, Appellate Court should have either asked the trial Court to examine the witnesses of the sale deed and scribe or should have itself allowed the parties to lead evidence because Appellate Court is also a Court of fact and then decide the appeal itself instead of remanding the case back.

In this view of the mater, the present appeals are hereby allowed. Impugned order is hereby set aside. The Appellate Court is

directed to take the evidence of the attesting witnesses and scribe and then decide the lis between the parties to find out whether sale deeds Ex.P9 and Ex.P10 were executed by the vendor in his favour or not.

With these observations, the present appeals are hereby disposed of. Parties are directed to appear before lower Appellate Court on 23.2.2015.

So far as other appeals are concerned in which no application is allowed, order is set aside.

27.1.2015
Meenu

(Rakesh Kumar Jain)
Judge