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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4245-2004 (O&M)

Date of decision : 04.03.2016

Raghubir (deceased) through LRs

...Appellant

Versus

Shanti and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sumeet Mahajan, Senior Advocate with
Mr. Mukesh Kumar Verma, Advocate
for the appellant.

Mr. R.D. Yadav, Advocate
for respondent Nos.1, 2 and 4 to 8.

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?

AMIT RAWAL, J. (ORAL)

CM-7387-C-2009

For the reasons stated in the application, which is supported by affidavit, delay of three days in re-filing the appeal is condoned.

CM stands disposed of.

RSA-4245-2004

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court dated 29.07.2004, whereby the suit of the respondent(s)-plaintiff(s) has been decreed in pursuance of the contents of the decree dated 15.05.1982 passed in **Civil Suit No.108 of 1982** titled as

“Surajbhan etc. V/s Samakaur”.

Mr. Sumeet Mahajan, learned Senior Counsel assisted by Mr. Mukesh Kumar Verma, learned counsel appearing on behalf of the appellant-defendant submits that as per decree dated 15.05.1982, the claim of respondent(s)-plaintiff(s) in the instant suit, was qua 1/3rd share of Samakaur, whereas the decree aforementioned is not contrary to the claim, but it deal with 2/3rd share in respect of the land situated in Village Jadra, Tehsil and District Rewari, in essence, 1/3rd share of Samakaur was not part and parcel of the decree dated 15.05.1982. The trial Court dismissed the suit on the ground that the consent decree required registration, however, lower Appellate Court reversed the findings. Be that as it may, the fact remains that the judgment and decree of the lower Appellate Court is not only perverse but fallacious, as it has misdirected and misread the decree dated 15.05.1982 Ex.PY and thus, urges to this Court to formulate the following substantial question of law:-

Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity on account of misreading and mis-appreciation of the documentary evidence on record.

Mr. R.D. Yadav, learned counsel appearing on behalf of the respondent(s)-plaintiff(s), submits that there is no illegality and perversity in the judgment and decree of the lower Appellate Court which is based on appreciation of oral and documentary evidence, being the last Court of fact and no substantial questions of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is substance in the submissions of Mr. Mahajan. It would be apt to reproduce the decree Ex.PY, which read thus:-

“Claim:- Suit for declaration to the effect that plaintiffs are owner

in possession in equal share of 1/3 share in the agricultural land comprised in khewat No.3 khatoni no.11 Rect. No.7 kila Nos.12(8-0) 18 min East (4-6) 19 (7-11) 22 (8-0) Rect. no.12 kill No.2/1 (4-0) Rect. No.14 Kila nos.6(8-0) 14 min East (4-0) 15 (8-0) and Rect. No.15 kila_no. 11(8-0) Rect. No.31 kila No.21/2 (0-4) Rec. No.36 kila No.10/1 (1-2) and khatoni No.12 Rect. No.7 kil Nos.9(8-0) 18 min West (2-12) Rect. No.14 Kila Nos.13/2 (5-8) 14(4-0) min West total fields 15 total measuring 81 kanal 3 marla situated in the revenue estate of village Bohatwas Ahir Tehsil Rewari, and 2(b) – land comprised in khewat No.686 khatoni No.718 Rect. No.113 kila Nos.16 (8-0) 17 (8-0) 18 (8-0) 23(5-17) 27 (7-14) Rect. No.118 kila No.4(0-11) fields 6 measuring 38 kanal 2 marla its 2/3 share situated in the revenue estate of village Jadra Tehsil Rewari.

Plaint presented on 1st day of March, 1982.

Value for the purposes of court fee ₹25/-

Value for the purposes of jurisdiction ₹200/-

This suit coming on this day for final disposal before me in the presence of Sh. S.R. Sharma, Advocate counsel for the plaintiffs and Shri H.O. Maratha, Advocate, counsel for the defendant. It is ordered that suit of plaintiffs for declaration that they are owner in possession in equal share of the 1/3 share in the agricultural land described in para No.2(a) and 2/3 share in the agricultural land described in para No.2(b) of the plaint and as claimed for is hereby decreed. There is no order as to costs.

<i>Plaintiffs</i>	<i>Costs of Suit</i>	<i>Defendant</i>
<i>25-00</i>	<i>1. Stamp of plaint</i>	<i>Nil</i>
<i>2-00</i>	<i>2. Stamp for power</i>	<i>2-00</i>
<i>Certificate</i>	<i>3. Counsel fee</i>	<i>Certificate</i>
<i>not file</i>		<i>not filed</i>
<i>Nil</i>	<i>4. Process Fee</i>	<i>Nil</i>
<i>Nil</i>	<i>5. Misc.</i>	<i>2-00</i>
<i>27-00</i>	<i>Total</i>	<i>4-00</i>

*Given under my hand and seal of the court thus 15th day of
May, 1982*

Sub Judge 1st Class

Rewari”

The prayer in the suit is viz-a-viz the 1/3rd share in pursuance to the decree dated 15.05.1982. On juxtaposition of the decree and claim in the suit, I am of the opinion that Samakaur had never conceded viz-a-viz 1/3rd share, it was only with regard to 2/3rd share in respect of the land situated in Village Jadra, Tehsil and District Rewari, thus, decree of the lower Appellate Court decreeing the suit is not sustainable as it amounts to misreading and mis-appreciation of the documentary evidence.

Keeping in view the aforementioned facts and circumstances, the judgment and decree of the lower Appellate Court is set aside and the suit of respondent(s)-plaintiff(s) is dismissed. Substantial questions of law as noticed above, are answered in favour of the appellant-defendant and against the respondent(s)-plaintiff(s)

With the aforementioned observations, the appeal is allowed.

04.03.2016
yogesh

(AMIT RAWAL)
JUDGE