

SAO No. 43 of 2004

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In the High Court of Punjab and Haryana at Chandigarh

SAO No. 43 of 2004(O&M)

Date of Decision:31.5.2016

Rajneesh

---Appellant

vs.

Dinesh Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Adish Gupta, Advocate
for the appellant

Mr. Shiv Kumar, Advocate
for the respondents

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal has been directed against order dated

1.5.2004 passed by the Additional District Judge (I), Faridabad whereby civil appeal preferred by respondent Nos. 1 to 3 against the judgment and decree dated 23.2.2004 passed by the Civil Judge (Junior Division), Faridabad (hereinafter referred to as “the trial court”) has been allowed, the judgment and decree passed by the trial court has been set aside and the matter is remanded to the trial court for decision afresh by invoking the provisions of Order 41 Rule 23 of the Code of Civil Procedure (in short “CPC”).

The learned trial court in view of pleadings of the parties, framed the following issues for determination:-

1. Whether the suit property is ancestral qua the plaintiff and Makhan Singh as alleged?OPP
2. Whether the plaintiff has got locus standi to file the present suit?OPD
3. Whether defendant Makhan Singh deceased executed a valid Will dated 27.12.1990 in respect of the suit land mentioned in para No.3 of the plaint?OPD
4. Whether the suit is speculative and not maintainable?OPD

5. Whether the suit is time barred? OP Parties

6. Whether the suit has not been properly valued for the purposes of court fee?OPD

7. Relief.”

On the basis of evidence adduced by the appellant/plaintiff Rajneesh and evidence (partly) examined by the defendants, the trial court recorded its findings on issue No. 1 but the remaining issues were decided on the basis of compromise deed dated 18.11.2003 (Ex. C1). The appellate court set aside the judgment and decree passed by the trial court primarily on the ground that the compromise deed Ex. C1 is unlawful in view of its observations recorded in paras 10 to 19 of the judgment.

The Court has taken a serious view that as the compromise deed Ex. C1 neither bears signatures of Arun Kumar and Arvind Kumar, defendant Nos. 2 and 3 sued as minors through their natural guardian nor the trial court ever permitted Smt. Bimla their mother to withdraw from her being natural guardian or permitted Arun Kumar and Arvind Kumar to pursue the suit in their independent capacity on their having attained majority, the compromise Ex. C1 cannot become the basis for disposal of

the suit to the detriment of Arun Kumar and Arvind Kumar who have set up a Will dated 27.12.1990 purported to be executed by Sh. Makhan Singh in favour of Dinesh Kumar son of Khazan Singh, Arun Kumar and Arvind Kumar sons of Mahesh Chand son of Khazan Singh.

Counsel for the appellant is not in a position to assail correctness of factual findings recorded by the Court of Appeal. It has not been disputed that in view of the provisions of Order 23 Rule 3 CPC, a suit can be decided wholly or in part by any lawful agreement or compromise (in writing and signed by the parties). As the compromise deed Ex. C1 which has been made foundation of the impugned decree, has not been signed by Arun Kumar and Arvind Kumar, beneficiaries under the Will set up by them nor by their mother through whom they were sued being minors, no fault much less illegality can be found in the findings recorded by the Court of appeal that the compromise Ex. C1 cannot form the basis for disposal of the suit. It is pertinent to mention here that even it is not clear on record if Arun Kumar and Arvind Kumar had attained the age of majority on the date, the compromise deed dated 18.11.2003 was executed between the parties other than Arun Kumar and Arvind Kumar. That being

so, there is no ground to interfere in the findings recorded by the Court of Appeal setting aside the judgment and decree passed by the trial court and remitting the matter to the Court below for decision of the suit afresh by giving specific findings on each issue as contemplated under Order 14 Rule 2 read with Order 20 Rule 5 CPC.

In view of what has been discussed hereinabove, finding no merit, the appeal is dismissed. Nothing stated in this order shall cause prejudice to either of the parties at the time of final disposal of the case on merits.

(Rekha Mittal)
Judge

31.5.2016
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