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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1968-2008 [O&M]

Date of Decision : April 7th, 2016

Jagdish

.... Appellant

Versus

Hari Singh alias Hira Singh

.. Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Rajesh Narang, Advocate,
for the appellant.

Mr. Arun Jain, Senior Advocate, with
Mr. Amit Jain, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present Regular Second Appeal is directed against the concurrent findings having been recorded by both the Courts below, whereby, suit filed by the plaintiff was dismissed by the Court of first Instance vide judgment and decree dated 12.12.2007. The appeal filed by him was also dismissed by learned Additional District Judge, Gurgaon vide judgment and decree dated 14.05.2008.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that the plaintiff filed a suit for declaration that the judgment and

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decree passed in Civil Suit No. 447 of 18.9.1991 [Ex.PF] titled **Jagdish Vs. Hari Singh** and subsequent mutation No. 3083 [Ex. PH] and other revenue entries are illegal, null and void based on fraud and also sought relief of permanent injunction restraining the defendant from interfering in the peaceful possession of the suit land.

4. Defendant contested the suit, *inter alia*, taking the plea that the civil Court decree was passed on the basis of family settlement. Prior to that parties to the litigation had exchanged their respective land situated in village Faruukh Nagar and Gokulpuri. The defendant claimed that the present suit is barred under the provisions of Order II Rule 2 as well as Section 11 of the Code of Civil Procedure and otherwise also, the suit is hopelessly time barred because the plaintiff was well aware of passing of decree dated 18.9.1991 [Ex. PF] and he himself appeared in the Court and filed the said suit. Defendant is in possession of the suit land from the last 15 years and the plaintiff has got no right and the decree, Ex. PF has already become final.

5. On the pleadings of the parties, the Court of first instance settled the issues. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance dismissed the suit of the plaintiff. The appeal filed before the Court of first Appeal was also dismissed. As such, the present Regular Second Appeal.

6. Learned counsel for the appellant submitted that the appellant was non-suited on the ground that the appellant failed to prove that he was a victim of fraud. He has also been non-suited on the ground of limitation. While arguing on the point of limitation, learned counsel for the appellant

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submitted that earlier, he was working in the Railways department and he had no knowledge about passing of the decree, Ex. PF and he was victim of fraud only. The present suit was filed when he came to know about passing of decree after his retirement from government service in the year 2002.

7. As regard to the plea of fraud, learned counsel for the appellant submitted that the transaction of exchange speaks itself that it was a case of fraud because the appellant was to receive land measuring 2 Kanals 2 Malas against 22 Kanals of land and there cannot be any such family settlement, but the Courts below have completely ignored this fact while recording findings and the said findings are liable to be set-aside. To support his arguments, reliance has been placed upon the judgments of Hon`ble Supreme Court in **S.P.Changalvaraya Naidu [dead] by LRs Vs. Jagannath [dad] by L.Rs.** 1995(1) PLR 293; **United India Insurance Co. Ltd. Vs. Rajendra Singh and others etc.** 2000 (2) R.C.R. [Civil] 483; **Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Ors,** 2005 AIR [SC]3330; **Lilly Kutty Vs. Scrutiny Committee, S.C. and S.T. and others** 2005 AIR [SC] 4313; **Santosh Vs. Jagat Ram & Anr.** 2010 [2] JT 253; **Smt. Badami [deceased] by her L.R Vs. Bhali** 2012 [93] ALR 245; **Phool Patti and another Vs. Ram Singh [Dead] through Lrs and another** 2015 (1) R.C.R. [Civil] 606 and judgment from a Coordinate Bench of this Court in **Madan Lal and another Vs. Rajesh Kumar [Dead] through Lrs** 2005(4) R.C.R. [Civil] 72.

8. While arguing on this point, learned counsel for the respondent submitted that both the Courts below have already recorded concurrent findings of fact and there are no grounds to interfere in the said findings.

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More so, on the basis of decree, Ex. PF, mutation Ex. PH was sanctioned in the year 1991 only and even then the suit was filed after 11 years.

9. Learned counsel for the respondent further submitted that if the plaintiff was to challenge the said judgment and decree dated 18.9.1991 [Ex. PF], then he was to challenge the same before the same Court, but that has not been done. More so, in his cross-examination of PW-2, plaintiff - Jagdish had stated that he came to know during his employment in the year 1991 and even the exchange was with his consent.

10. Learned counsel for the respondent then submitted that it had come in the statement of the plaintiff that he used to reside in the area of village Gokalpuri with his family and the plea taken by him that he came to know about passing of the decree based on fraud only after his retirement stands disproved from his statement and the Courts below have rightly returned the concurrent findings of fact.

11. Learned counsel for the respondent finally submitted that it was in the statement of the plaintiff that the present suit was got filed by his wife and son meaning thereby he was not aggrieved of passing of the judgment and decree based on any fraud. On the basis of said judgment and decree, Ex. PF, mutation Ex. PH was sanctioned on 25.9.1991 and thereafter, corresponding entries were being recorded in the jamabandi for the year 2001-02 [Ex.R2]. It had also come on the file that the appellant himself obtained jamabandi of both the villages before filing the suit and the parties had exchanged their land for their mutual convenience and it was not a case of fraud.

12. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view

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that both the Courts below have already appreciated oral as well as documentary evidence. The plaintiff has not been able to prove at all that he was a victim of fraud at any stage, rather, it was case of exchange of land having been effected between the parties as per their convenience. Thereafter, the said judgment and decree [Ex.PF] was never challenged within the stipulated period though revenue record was continuously being maintained and the period of limitation is to start from the date of passing of the decree. The concurrent findings of fact have been recorded by both the Courts below on the basis of facts and evidence available on the file and there are no grounds to interfere and set aside the said findings.

13. The judgments relied upon by learned counsel for the appellant are of no help to the appellant because in this case, the appellant has failed to prove that he is a victim of fraud. It is settled proposition of law that any body who alleges fraud must prove the same because it is very easy to allege fraud but the law requires that the same must be proved beyond any reasonable doubt as proof of charge in a criminal case.

14. As per view taken by Hon`ble Supreme Court in **Deity Pattabhiramaswamy Vs. S. Hanymayya and others, AIR 1959 SC 57,** the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of erroneous findings of fact. As per view taken by Hon`ble Supreme Court in **Commissioner Hindu Religious & Charitable Endowment Vs. P.Shanmugama & Ors., JT 2005 (1) SC 201** and **Biswanath Ghosh [Dead] by LRs and Ors. Vs. Gobinda Ghosh alias Gobindha Chandra Ghosh & Ors. AIR 2014 SC 1582,** second appeal cannot be entertained if there is no substantial question of law involved therein.

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15. In the present second appeal, there is no substantial question of law involved, rather both the Courts below have already appreciated the entire evidence. Hence, the present appeal is not maintainable as per provisions of Section 100 of the Code of Civil Procedure, 1908.

16. In view of the above, the present Regular Second Appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

April 7th, 2016
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