

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3176 of 2011
Date of decision : March 18th, 2016

Ran Pal and others

..... Appellants

Versus

Jito Devi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. C. B. Goel , Advocate
for the appellants.

Mr. Pritam Saini, Advocate
for respondent No.1.

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.

The appellants-defendants are in appeal against the judgment and decree rendered by the lower appellate court whereby the suit of the respondent-plaintiff has been decreed, in essence, the judgment and decree of the trial court has been set aside whereby the suit has been dismissed.

Mr. C. B. Goel, learned counsel appearing on behalf of the appellant-defendant submits that the respondents-plaintiffs instituted a suit in the year 2008 seeking declaration that the mutation bearing No.1096 dated 30.4.1999 in favour of defendant No.1-Santosh Devi and lease deed dated 11.6.1999 executed by defendant No.1 in favour of defendant Nos. 2 to 4 and sale deed No. 1430/1 dated 29.12.2000 executed by defendant No.1 in favour of

defendant Nos. 5 to 7 during the pendency of the suit being null and void on the premise that defendants had been wrongly shown to be owners of the land vide mutation No. 1096 dated 30.4.1993 which is illegal, null and void on the ground that Subhash Chand son of the plaintiff was not married with defendant No.1. He died on 19.11.1993 in an accident and claim petition was filed claiming compensation. Taking the benefit of wrong entries executed a lease deed aforementioned and as well as sale deed whereas it has been categorically stated in the written statement that Jito Devi had two sons namely Subhash Chand and Naib Singh. Subhash Chand was married to Santosh Devi-defendant No.1. Wife of Naib Singh and Subhash Chand were sisters. After the marriage she remained at village Budha for a few days as she was minor at that time and Muklawa ceremony was to be performed later on. Before that her husband died in an accident. The plaintiff was aware of the mutation proceedings from the very beginning. The MACT proceedings does not indicate that the deceased was minor as it was decided in Lok Adalat and the order passed there has been placed on record. Mutation was rightly sanctioned in favour of defendant No.1 after the demise of Subhash Chand. The marriage of Subhash Chand and Naib Singh was performed on the same day with Santosh and Kamlesh respectively. The factum of marriage has already been proved through the testimony of DW-1 Ran Pal, who in examination-in-chief submitted that he had accompanied the barat and attended the marriage ceremony of Naib Singh and Subhash Chand both the brothers with Kamlesh and Santosh Devi and no dent has been

caused in the cross examination except a mere suggestion. The plaintiff did not discharge the onus by leading any evidence that Subhash Chand was never married. Even there is no compliance of provisions of Section 50 of the Indian Evidence Act, 1872 with regard to the mutation, much less there was no marriage. The trial court on the basis of the aforementioned evidence dismissed the suit, however, the lower appellate court committed illegality and perversity in decreeing the suit by erroneously holding that the testimony of two witnesses who attended the marriage is not sufficient to prove that Subhash Chand was married. Even the pedigree table prepared in the impugned mutation is also of no consequence as no evidence has been lead in support of the same. Defendant Nos. 5 and 7 are bona fide purchasers for a valuable consideration has also been held to be illegal.

He further submits that the lower appellate court failed to take into consideration the statement of the plaintiff herself where she admitted that she was married when her age was 14/15 years and she had cordial relationship with Naib Singh who is attesting witness of the sale deed, much less attested the mutation and this fact was admitted by her and thus, urges this Court to formulate substantial questions of law as carved out in the Memorandum of Appeal:-

“i) Whether the lower appellate court committed a legal error in drawing an adverse inference against defendant No.1 for having not stepped into the witness box, in view of the fact that she was left

with no interest in the suit property having sold the same to the defendant/appellants vide registered sale deed dated 29.12.2000 for valuable consideration of Rs.8 lacs though she filed her written statement controverting the claim of the plaintiff/respondent?

ii) Whether the plaintiff is to stand on her own legs and cannot take any benefit in the weakness of the evidence of the defendant and, therefore, the onus to prove that defendant No.1 was not the wife of the deceased-Subhash Chand, lied heavily upon her?

iii) Whether the appellants are bona fide purchasers for consideration and as such their title is protected under Section 41 of the Transfer of Property Act?

iv) Whether the judgment and decree of the lower appellate court reversing the well considered judgment and decree of the trial court deserves to be set aside being perverse and based on conjectures and surmises?"

Mr. Pritam Saini, learned counsel appearing on behalf of respondent No.1 submits that there is no illegality and perversity in the findings rendered by the lower appellate court. The defendant-Santosh Devi failed to prove that she is wife of Subhash

Chand. She has not stepped into the witness box, therefore adverse inference is liable to be drawn. The appellants-defendants cannot be branded as bona fide purchaser as Subhash Chand died issueless, therefore his entire estate devolved upon his mother-Jito Devi. There is no cross-examination to the statement of Jito Devi viz-a-viz Subhash Chand having not married to defendant No.1, thus, discharged the onus. The appellants-defendants failed to rebut the same and urges that no substantial question of law arise for determination by this court.

I have heard learned counsel for the parties, appraised the paper book as well as record of the courts below and of the view that there is merit in the submission of Mr. C. B. Goel, for, the appellants-defendants specifically denied the corresponding averments in the plaint viz-a-viz non-performance of marriage of Subhash Chand with defendant No.1-Santosh Devi, rather, it was stated that marriage of Subhash Chand son of Jito Devi was performed on 16.5.1991 and elder sister of her, Kamlesh was married with real brother of Subhash Chand namely Naib Singh on the same day. The plaintiffs have inherited 10 Kanals of land of hers. The factum of marriage of Kamlesh with Naib Singh was admitted in the replication, however, factum of marriage of Subhash Chand was denied. Except a self serving statement of respondents-plaintiffs, no other evidence has been lead to show that Subhash Chand was not married. The respondents-plaintiffs have failed to discharge the onus viz-a-viz marriage of Subhash Chand. There is no compliance of provisions of Section 50 of the Indian Evidence Act, 1872. She in

cross-examination admitted that she had cordial relationship with Naib Singh, whose wife is Kamlesh. Naib Singh is the attesting witness of the sale deed dated 29.12.2000. Once she had admitted to have cordial relationship with Naib Singh as a witness, in my view, filing of the suit is an act of aggrandizement as she has sold her share which has fallen to her and now eyeing on the estate of respondent No.1. DW-1 Ran Pal had admitted the factum of marriage of both Naib Singh and Subhash Chand. The respondents-plaintiffs have failed to cause any dent in the cross examination as the evidence has gone un-rebutted.

Even from the order dated 30.1.1999 Ex.P-3 passed by the MACT Jagadhri, it is revealed that it was decided on the basis of compromise. The order does not reveal age of the deceased Subhash Chand proving that he was minor at the time of accident but these facts have not been noticed by the lower appellate court.

Keeping in view the facts and circumstances mentioned above, the questions of law framed above are answered in favour of the appellants-defendants and against the respondents-plaintiffs. In essence, the judgment of the trial court is restored and the suit fails.

The appeal stands allowed.

(AMIT RAWAL)
JUDGE

March 18th, 2016
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