

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 1747 of 2016(O&M)

Date of Decision: May 28, 2016

Sarup Singh(since deceased) through his LRs.

---Appellants

versus

Om Prakash and Others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sumit Sangwan, Advocate
for the appellants.

Rekha Mittal, J. (Oral)

The present appeal has been directed against the consistent findings recorded by the Courts below whereby the suit filed by Sarup Singh (since deceased) now represented by his legal representatives was dismissed by the trial Court vide judgment and decree dated 09.10.2012 and the findings recorded by the trial Court have been affirmed in appeal by the District Judge, Bhiwani.

The learned trial Court, on consideration of pleadings, evidence adduced and rival submissions made by counsel for the parties decided Issues No. 1 to 3 taken up together against the plaintiff/appellant and further held that in view of findings on issues No.1 to 3, suit is not maintainable in the present form, the same is time barred and defendant No. 3 is a bonafide purchaser for consideration while disposing of Issues No. 4, 5 and 7 jointly.

It has further been noticed by the Court that the alleged agreement to sell propounded by the plaintiff dated 06.07.1990 has not been produced and proved, therefore, the plaintiff cannot seek specific performance of the alleged agreement and that too by filing a suit after 13 years. The previous suit No. 952 of 1994 seeking relief of declaration on the basis of adverse possession was dismissed vide judgment and decree dated 26.09.2003 and as the plea of seeking declaration and specific performance of the alleged agreement was available to the plaintiff at the time of institution of the previous suit but he did not raise such plea nor was permitted to raise these pleas by way of separate suit, the suit is hit by Order 2 Rule 2 of the Code of Civil Procedure, 1908.

Counsel for the appellant has submitted that the Courts below have not non-suited claim of the appellant on hypertechnical grounds that cannot be allowed to stand in the way of substantial justice. It is further submitted that the present appeal gives rise to substantial questions of law culled out in para 5 of the grounds of appeal.

I have heard counsel for the appellants, perused the paper book particularly the judgments passed by the Courts below but find that the appeal sans merit and deserves to be dismissed.

A perusal of the alleged questions of law formulated in para 5 of the grounds of appeal would indicate that as a matter of fact these are not the questions of law much less substantial one arising in the circumstances of the present case. I have carefully gone through the reasoning adopted by

the Courts below and the observations made in the judgments but find it difficult to accept the submission that the Courts below have committed any error much less illegality in holding against the appellant. This apart, no question of law much less a substantial one arises for adjudication.

For the foregoing reasons, the appeal fails and is accordingly dismissed. No order as to costs.

(Rekha Mittal)
Judge

May 28, 2016
'D.Gulati'