

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No. 2983 of 2015

Date of Decision: 11.02.2016

Sohan Singh and others

...Appellants

Versus

Sadhu Singh (deceased) through his LRs and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Umesh Kumar Kanwar, Advocate,
for the appellant.

Amol Rattan Singh, J.

This is the second appeal filed by the plaintiffs, who had instituted a suit for declaration and consequent permanent injunction against the respondents-defendants, to the effect that a sale deed dated 04.04.1963, executed by the late Shangara Singh, father of defendants No. 2 and 3, Kashmir Singh and Jagir Singh, be declared to be a forgery and also to be void, being without consideration. (Kashmir Singh is now represented by his three legal representatives at serial nos. 2(a), (b) and (c) in the array of respondents). It was further submitted that Shangara Singh had no right to sell or alienate the property at all and as such, the sale in favour of respondent No. 1, Sadhu Singh (now represented by his legal representatives), was in any case a null and void transaction.

The land stated to have been sold in favour of respondent No. 1 was measuring 49 kanals 1 marla, as fully described in the plaint.

2. As per the appellant-plaintiffs, it was alleged that the father of appellant No. 1 was the owner of the suit property and after his death, it devolved upon appellant No. 1, Sohan Singh, his late brother Sakattar Singh, and his sister Charanjit Kaur (respondent-defendant No. 4).

It was further submitted that Sakattar Singh had died unmarried and was issueless and during his life time, gave his estate to appellant-plaintiff No. 2, Jasbir Kaur, who is the wife of appellant No. 1. Thus, the appellants and respondent No. 4 became owners in possession of the said property and Shangara Singh had no title whatsoever, to alienate it.

As to how Shangara Singh claimed title is not discussed anywhere in the judgments of the Courts below, but as will be seen presently, that issue loses significance, in view of the ground on which the suit and appeal filed by the appellant-plaintiffs, was dismissed.

3. It was further stated that respondent No. 1, Sadhu Singh, had filed a suit for declaration, bearing Civil Suit No. 785 of 1991, which was decided on 25.11.1993 against the appellants and respondent No. 4 (Charanjit Kaur @ Jiti) and the late Sakattar Singh. However, it was further submitted that in the said suit, it was wrongly pleaded that the suit property was in the ownership of Shangara Singh. In

fact, a pre-emption suit was decreed in favour of Tirath Singh, father of appellant No. 1 in which Shangara Singh had no concern.

A plea was also taken that even if Shangara Singh was a party to the said suit, he had no rights in the suit property so as to alienate it and, in any case, he was never a tenant on the land which was preempted.

Further plea was taken (in the present suit) that the land sold by Shangara Singh to Sadhu Singh, was from '*Khata*'/'*Khatauni*' No. 198-500-501-495-369 and not from any other '*Khata*'. Hence, Shangara Singh had actually sold his own 1/4th share of 121 kanals and 18 marlas of land, and the land belonging to the father of the appellants had been wrongly sold.

Subsequently, respondent No. 1, Sadhu Singh, had also filed an application under Section 152 of the Code of Civil Procedure, 1908, on 25.05.1997, for correction of the decree dated 25.11.1993, which shows that Sadhu Singh was also not satisfied with the decree. Also no mutation was sanctioned in favour of Sadhu Singh.

4. The legal representatives of respondent No. 1, Sadhu Singh (who died during the pendency of the suit), in their written statement, took preliminary objections with regard to concealment of material facts, specifically that it had been wrongly stated that no suit was pending or had been decided by the Court of competent jurisdiction regarding the subject matter of the suit, even though earlier also a suit filed

by the appellant-plaintiff No. 1, along with the late Sakattar Singh and respondent No. 4 Charanjit Kaur @ Jiti, was actually decreed in favour of Sadhu Singh. Another suit was also filed by appellant No. 1, which was also dismissed on 27.09.2000. Proceedings under Section 145 of the Cr.P.C., were also instituted *inter se* parties, which were decided in favour of the respondents-defendants.

It was further stated in their reply that an appeal filed by Hira Singh and others (presumably in the subsequent suit filed by the appellant) was also dismissed and a suit filed by Hira Singh against Karnail Singh, predecessor-in-interest of the answering defendants (LRs of present respondent No. 1), had been dismissed on 19.08.2006. Still further, an appeal filed by the ancestor of the appellants was also dismissed on 25.10.2006.

Yet another case filed in the Revenue Courts was decided by the Financial Commissioner on 22.07.2008, all of which the appellants had not disclosed in the plaint filed by them in the present proceedings.

The LRs of respondent No. 1 further contended that the appellants are neither owners, nor in possession of the suit property, which had been purchased by Sadhu Singh, vide sale deed dated 04.04.1963 and that sale deed had already been upheld by the Civil Court in the earlier round of litigation. It was further contended that the decree was qua the same land as was subject matter of the present suit.

Yet further, in the written statement filed on behalf of respondent No. 1, it was contended that the appellants had tried to take forcible possession of the suit land, which was resisted and a criminal case was registered against them.

In the reply of respondent No. 1, on merits also, all the contentions of the appellants, taken in their plaint, were denied.

5. Defendants No. 2 to 4 (presently also respondents No. 2 to 4) did not appear before the learned Civil Judge (Senior Division) and were proceeded against *ex parte*.

The appellants-plaintiffs filed a replication controverting the assertions made on behalf of respondent No. 1, while reiterating their contentions in the plaint.

The following issues were framed by the learned Civil Judge (Senior Division), Tarn Taran:-

1. *"Whether the sale deed dated 04.04.1963 executed by Shangara Singh in favour of defendant No. 1 is act of forgery and is without consideration and also is liable to be set aside? OPP*
2. *Whether the plaintiffs are entitled to perpetual injunction restraining the defendant No. 1 for taking possession of the suit land? OPP*
3. *Whether the plaintiffs are entitled to perpetual injunction restraining the defendant No. 1 from getting any mutation sanctioned in his name on the basis of sale deed dated 04.04.1963? OPP*
4. *Whether the plaintiffs are guilty of suppressing the true facts? OPD*

5. Whether the suit is barred by way of principle of res judicata? OPD

6. Whether the suit is within time? OPP

7. Whether the suit is properly valued for the purposes of court fee and jurisdiction? OPP

8. Relief"

6. The appellants examined Rakesh Kumar, the Record Clerk of the Judicial Record Room, Amritsar, who produced the record of Civil Suit No. 187/1997, titled as **Sadhu Singh vs. Sohan Singh**, decided on 27.09.2000, as also a copy of the plaint filed in the said suit (Ex. P-1).

PW-2, G.S.Sandhu, Advocate, proved the thumb impression of the late Sadhu Singh on a copy of the said plaint, Ex. P-1, which he stated was drafted and read over to Sadhu Singh, who had thereafter, affixed his thumb impression, after which this witness signed as the counsel for the plaintiff in that litigation.

Appellant-plaintiff No. 1, Sohan Singh, appeared as PW-3 and also filed his affidavit in support of the plaint and further stated that he had made a '*Haveli*' on the suit land for domestic animals and had also installed a Tubewell and presently, had sown wheat crop on it.

He further testified that Sadhu Singh had, thereafter, declared that he had purchased 26 kanals of land for Rs. 4,000/- from Shangara Singh as per the '*Jamabandi*' of the year 1959-60, but that sale deed was a forged and fabricated document. Consequently, even an FIR had been registered by the appellants in the year 2007, the criminal

proceedings in pursuance to which were pending in the Court of the Judicial Magistrate, First Class, Tarn Taran.

He, further deposed that the contention of the respondents that they had obtained a Civil Court decree in respect of the sale deed dated 04.04.1963, was incorrect and that actually they had no right to the suit property.

He also deposed that Sadhu Singh had filed a suit in the Court of learned Civil Judge (Junior Division), Tarn Taran, which was dismissed on 27.09.2000. A case regarding mutation of the land, based on the said sale deed, was also pending in the Court of the Commissioner, Jalandhar Division.

7. In defence, Lakhvir Singh son of Sadhu Singh (respondent-defendant No. 1 (e)] examined himself as DW-1 and deposed in terms of the written statement, with regard to the earlier litigation and stated that it was actually the suit filed by appellant No. 1, that had been dismissed on 27.09.2000. The proceedings under Section 145 Cr.P.C. were also decided by the Sub Divisional Magistrate, Tarn Taran. An appeal filed by Hira Singh and others was dismissed by the learned Additional Sessions Judge, Tarn Taran and the respondents were held to be in possession of the land.

Another suit filed by the first appellant, against Karnail Singh (another son of Sahdu Singh) was also dismissed on 19.08.2006 as was the appeal filed against that.

He further deposed that with the suit filed by Sadhu Singh, in respect of the registered sale deed dated

04.04.1963 having been decreed in Sadhu Singh's favour, the matter could not be reopened.

8. The learned Civil Judge found, as a matter of fact, that the khasra numbers that were subject matter of in the civil suit which culminated in the judgment and decree dated 25.11.1993 (Ex. D-1), were the same as the khasra numbers which were subject matter of the present suit, as was the sale deed which was under challenge in this case. Appellant No. 1, Sohan Singh was a party to the earlier suit and had filed a written statement, after which the matter was considered and finally decided in favour of the plaintiff in that suit, i.e. Sadhu Singh (late respondent No. 1) and the appellants-plaintiffs (defendants in that suit), not having filed any appeal against that judgment and decree, it attained finality.

It was also found by the learned Civil Judge that another suit filed by appellant No. 1, Sohan Singh, was dismissed under Order 9 Rule 3 CPC, for non-appearance of the parties, without any decision on merits.

One Hira Singh along with eleven others plaintiffs, thereafter, filed a suit seeking permanent injunction against the sons of Sadhu Singh (now represented as his LRs), which was dismissed by the Civil Judge (Junior Division), Tarn Taran, vide the judgment Ex. D-4 and decree-sheet Ex. D-5, on 19.08.2006.

Hence, it was held that the suit (out of which this second appeal arises), was not maintainable, on the principle of *res judicata*.

9. It was also held that the appellant-plaintiffs were guilty of not having disclosed the entire case history of previous litigation and as such, on that ground also they were not entitled to any relief.

It was further held that the sale deed dated 04.04.1963 had already been challenged earlier, in the year 1991 and the present suit had been filed in the year 2001 and as such, in any case, it was beyond limitation (even if it was presumed to be a suit for declaration that the earlier judgment and decree are null and void and not binding on the plaintiffs).

10. Thus, on the principle of *res judicata*, as also on grounds of concealment of necessary facts and and on being beyond limitation, the suit of the appellant-plaintiffs was dismissed by the learned Civil Judge (Senior Division), Tarn Taran.

11. The learned first Appellate Court, after noticing all the above, also came to the conclusion that the decree in favour of Sadhu Singh, dated 25.11.1993 (Ex. D-1), never having been challenged by the present appellants, it had attained finality and the another suit filed by them also had also been dismissed in default under Order 9 Rule 3 CPC.

On the above ground, the appeal was also dismissed.

12. Before this Court, learned counsel for the appellants submitted, that contrary to what has been held by the learned Civil Judge (Senior Division), there was actually

no concealment on behalf of the appellants, because they had disclosed in the plaint itself with regard to earlier litigation between the parties.

However, on query, he could not deny that the suit filed by Sadhu Singh (respondent No. 1 through his LRs), in which appellant-plaintiff Sohan Singh was also a party, was decreed in favour of Sadhu Singh on 25.11.1993 with no further appeal filed. He also could not deny that no evidence has been led , to show that the land which was subject matter of that suit, was not the same as is subject matter of the present proceedings.

Yet further, the suit filed at the instance of appellant No. 1 Sohan Singh, having been dismissed for non appearance, could also not be denied by learned counsel.

No other point was urged.

13. In view of the detailed discussion by the Courts below, on the issue of an earlier round of litigation having reached finality qua the same suit land, with no appeal filed against the judgment and decree dated 25.11.1993, with obviously no denial thereto even before this Court, I find that no matter what the other merits of the appellants case may be, there can be no error found in the judgments of Courts below, in dismissing the suit of the appellant on the principle of *res judicata*.

I also find no error in the judgment of learned Civil Judge (Senior Division), holding that the suit out of which this appeal arises, was beyond limitation and even if that cannot

be stretched to say that the declaration sought was in fact for declaring the previous judgment and decree dated 25.11.1993 as null and void, on account of some discrepancies in the khasra numbers of the suit decided in 1993, the limitation for such declaration being only three years, obviously the present suit was also barred by limitation.

14. Though, as per the contentions made before the learned Civil Judge, the appellant-plaintiffs had contended that the land which was subject matter of the previous litigation was actually different to the land that is subject matter of the present suit and appeal, no evidence in that regard is forthcoming even at this stage.

Hence, I find no merit in the present appeal and the same is dismissed *in limine*, with no orders as to costs.

(Amol Rattan Singh)
Judge

February 11, 2016
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