

Regular Second Appeal No.460 of 2016 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: September 05, 2016

1. R.S.A.No.460 of 2016 (O&M)

Savitri Devi & others

...Appellants

Versus

Sher Singh

...Respondent

2. R.S.A.No.461 of 2016 (O&M)

Savitri Devi & others

...Appellants

Versus

Sher Singh @ Nanha Property Dealer

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.N.C.Kinra, Advocate,
for the appellants in both the appeals.

Mr.Sandeep K.Sharma, Advocate,
for the respondent in both the appeals.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing No.460 and 461 of 2016 as the common questions of law and fact are involved in both the appeals.

Appellant-defendants in RSA No.460 of 2016 are aggrieved

of the decretal of the suit titled as “Sher Singh Versus Smt.Savitri Devi & others” and appellant-plaintiffs in RSA No.461 of 2016 against dismissal of their suit titled as “Savitri Devi & others Versus Sher Singh”.

Mr.N.C.Kinra, learned counsel for the appellants in both the appeals submits that Rajender Singh (since deceased) was owner of the property. He died on 15.5.2002. He had acquired the property by virtue of sale deed No.15 dated 1.4.1986 and decree dated 13.3.1990. There is no dispute to his ownership. Sher Singh plaintiff in RSA No.460 of 2016 instituted a suit against him being his brother, wherein description of the property was given as a shed shown in red colour situated in House No.673/1 now bearing No.2486/3, situated at Bye Pass Road, near Jind, Railway Crossing now known as Sanjay Colony, Rohtak measuring 1109 sq.yards, bounded as under:-

East: Agricultural of land of Mandir.
West: Agricultural land of Mandir.
North: Agricultural land of Mandir.
South: House of Rohtas and Sandeep

However, on the death of Rajender Singh, mutation No.10272 was entered in favour of the appellants on the basis of natural succession. It is in this backdrop of the matter, plaintiff-Sher Singh instituted the suit seeking declaration and permanent injunction on the basis of the decree, which has erroneously been decreed on the ground

that the property shown in red colour in the site plan in the previous suit

and the present one is different. In fact, the mutation also pertained to excess land. The Court erred in not referring to the documentary evidence and, thus, there is illegality and perversity. He submits that his client has no dispute to the shed, but the house measuring 1109 sq.yards. It was only part shown red in the site plan of the aforementioned area and, thus, urges this Court for setting-aside of the judgments and decrees under challenge to this extent.

Mr.Sandeep K. Sharma, learned counsel for the respondents submits that there is no illegality and perversity. The suit had been decreed in consonance with the previous decree dated 16.3.1994 passed in Civil Suit No.162 of 18.2.1994. The same was got registered and, therefore, nothing survives in the suit and the appeal and the defence taken in the suit filed by the plaintiff, much less both the Courts below have decreed the suit titled as “Sher Singh Versus Savitri Devi & others” and dismissed the suit titled as “Savitri Devi & others Versus Sher Singh”. He submits that concurrent findings cannot be interfered with.

I have heard the learned counsel for the parties and appraised the paper book.

In order to appreciate the controversy raised by the learned counsel for the parties, it would be apt to reproduce the decree rendered in Civil Suit No.162 of 18.2.1994. The same reads thus:-

“Claim for:- A decree for declaration to effect that the plaintiff is owner in possession of one shed shown in red colour in the site plan situated at House No.673/1, Bye-pass Road, Near Jind Railway Crossing, Rohtak measuring 1109 sq.yds and mentioned below:-

East: Agri.land of Mandir.

West: Agri.land of Mandir.

North: Agri.land of Mandir.

North: Houses of Rohtas & Sandeep.

Plaint presented on 18.2.94.

This suit coming on this day for final disposal before me (V.P.Bishnoi, HCS) Sub Judge Ist Class, Rohtak in the presence of Sh.S.L.Kishmisisia Adv.for plaintiff and Sh.C.S.Pawaria Adv.for deft.

*It is ordered that the suit of the plaintiff is decreed.
No order as to costs.”*

In the instant suit, the respondent sought declaration in respect of some other property, which is evident from the decree rendered by the trial Court. The same reads thus:-

“Claim for:- A decree for declaration to the effect that the alleged mutation No.10272 other revenue record and documents in favour of the defendants are illegal, null and void with consequential relief of permanent injunction restraining the defendants from interfering in the possession of the plaintiff and also from alienating the suit property described in para No.2 suit property i.e. House No.673/1 now bearing No.2486/3, situated at Bye pass road, near Jind, Railway crossing now known as Sanjay Colony,

Rohtak measuring 1109 Sq.yards, bounded as under:-

East: Agricultural land of Mandir.

West: Agricultural land of Mandir.

North: Agricultural land of Mandir.

South: House of Rohtas and Sandeep

Plaint presented on 23.5.2006.

This suit is coming on for final disposal before me (Nidhi Bansal, Civil Judge, (Jr.Divn.), Rohtak), in the presence of Shri Rajesh Sharma, counsel for the plaintiff and Sh.S.M.Nandal counsel for the defendants.

The suit of the plaintiff succeeds and is hereby decreed with cost. A decree of declaration is hereby passed in favour of the plaintiff and against the defendants declaring the impugned mutation and subsequent entries made on the basis of said mutation as illegal, null and void. The plaintiff held as owner in possession of the suit property. The revenue authorities are directed to make necessary corrections in their record accordingly. The defendants are hereby restrained from interfering in the possession of the plaintiff over the suit property and from alienating the suit property in any manner.”

On juxtaposition of both the decrees, I am of the view that there is no force and merit in the submission of Mr.Kinra that the suit with regard to property in excess had been decreed, whereas the boundary, description given in the previous decree and the present one is

identical. Even the area is also same. If at all it was so, the appellants

could have pointed out from mutation No.10272 that it was in excess of area as referred in the decree but on perusal of the same, it does not scribe to the submission of Mr.Kinra. In my view, the appellants have failed to demonstrate that the decree under challenge is not in consonance with the previous decree dated 16.3.1994, I am further of the view that no ground for interference is made out as the appellants had shown no objection with regard to the previous decree and the present decree is in consonance with the previous decree.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below, which are based on appreciation of oral and documentary evidence. No substantial question of law arises for determination by this Court. No case for interference is made out.

Appeals stand dismissed.

September 05, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No