

RSA-4660-2014(O&M)

1

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-4660-2014(O&M)

Date of decision : 19.01.2016

Som Pal

... Appellant

Versus

Sham Lal and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Parminder Singh, Advocate
for the appellant.

REKHA MITTAL. J.

The present regular second appeal lays challenge to the concurrent findings recorded by the Courts below whereby the suit filed by the appellant-plaintiff for declaration and permanent injunction and in the alternative for joint possession was dismissed by the trial Court and the findings recorded by the trial Court were affirmed in appeal by the Additional District Judge, Karnal.

The facts relevant for disposal of the present appeal are that the appellant challenged decree dated 27.09.1991 passed in Civil Suit No.448 of 1991 by Sub Judge Ist Class, Karnal whereby the suit filed by the respondents in respect of suit property against Sona Devi, erstwhile owner thereof was decreed. The appellant staked his claim to the suit land to the extent of 1/6th share out of land measuring 40 kanals 6 marlas

detailed in the head note of the plaint, on the plea that Sona Devi executed Will dated 20.09.2003 in favour of the appellant, therefore, he has become owner in possession of the suit land on the basis of testamentary succession. It is further averred that the property in dispute was neither ancestral nor joint Hindu Family Property but the same was received by Sona Devi from her husband and the decree dated 27.09.1991 does not confer any title in favour of the respondents for want of registration. Another plea raised by the appellant is that the aforesaid decree is the result of fraud and forgery committed by the respondents.

The respondents/defendants filed the written statement, contested claim of the appellant by raising certain preliminary objections as well as on merits. They have empathetically denied that Sona Devi executed any Will in favour of the appellant/plaintiff. They have denied all the material averments on the basis whereof, the appellant has assailed the judgment and decree dated 27.09.1991 with the averments that in Civil Suit No.285 of 1992, Sona Devi was a defendant and she filed her written statement and in para 8, she admitted that the decree dated 27.09.1991 is legal, valid and got passed by her. The respondents had pre-existing right in the suit land on the basis of family settlement between them and Smt. Sona Devi, the real aunt of the respondents being the wife of father's brother of the respondents. She had no male or female child and used to reside with the respondents. Oral family settlement in respect of the land in dispute took place between Sona Devi and the respondents in

the year 1991 and on the basis of said settlement, decree dated 27.09.1991 was got passed in favour of the respondents.

The learned trial Court framed issues, permitted the parties to adduce evidence in support of their respective claims and after having heard learned counsel for the parties and bestowing its thoughtful consideration to the materials on record dismissed the suit of the plaintiff/appellant.

The appeal filed by the appellant did not find favour with the Additional District Judge, Karnal and the Court concurred with the findings recorded by the trial Court.

Still feeling dissatisfied, the present appeal has been preferred by the appellant/plaintiff.

Counsel for the appellant would contend that Som Pal appellant is the nephew of Sona Devi from the paternal side. Sona Devi executed Will dated 20.09.2003 in favour of the appellant and the probate of the Will has already been granted in his favour. It is further argued that the judgment and decree dated 27.09.1991 is the result of fraud and forgery when otherwise the same does not create any right in favour of the respondents for want of registration.

I have heard counsel for the appellant, perused the records and find no merit in the appeal.

Counsel for the appellant has fairly conceded that the appellant has not pleaded the facts constituting fraud and forgery on the

part of the respondents in obtaining the decree dated 27.09.1991. It is also not denied that Sona Devi did not leave behind any Class I heir as she had no issue and her husband passed away before her death. There is also no dispute about the fact that the respondents are the sons of brother of husband of Sona Devi. Counsel has also not disputed that the land in dispute was inherited by Sona Devi on the death of her husband. As Sona Devi did not leave behind any Class I heir, the land left behind by her was to be inherited by the legal heirs of her husband. In this view of the matter, it is difficult to accept the contentions of the appellant that either the respondents did not have anticipated existing right in the property or the decree dated 27.09.1991 does not confer any right upon the respondents either on the basis of plea of family settlement or for want of registration. Analyzed from any angle, the contentions raised by counsel for the appellant are devoid of merit and liable to be rejected. In view of the above, it can be safely concluded that neither any substantial question of law, as has been sought to be raised or otherwise, arises for consideration nor there is any ground to differ with the findings recorded by the Courts below.

For the foregoing reasons, the appeal is dismissed in limine.

No order as to costs.

(REKHA MITTAL)
JUDGE

January 19, 2016.
Davinder Kumar