

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

101

RSA No.4981 of 2012 (O&M)
Decided on :16.08.2017

Vasdev and others

... Appellants

Versus

Sukhdial Rai and others

.. Respondents

RSA No.950 of 2013 (O&M)
Decided on :16.08.2017

Vasdev and others

... Appellants

Versus

Sukhdial Rai and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present : Mr.R.P.Kansal, Advocate
for the appellants

Rameshwar Singh Malik , J. (Oral)

These two identical regular second appeals directed against the same impugned judgments and decrees, at the hands of plaintiffs, are against the concurrent findings of facts recorded by both the courts below, whereby suit of the plaintiffs-appellants for declaration was dismissed by the learned trial court vide its impugned judgment and decree dated 27.05.2008 and the first appeal of plaintiff was also dismissed by the learned first appellate court vide its impugned judgment and decree dated 25.01.2012, upholding the judgment and decree of the learned trial court.

Both the appeals are being decided together vide this common order. However, for facility of reference, facts are taken from RSA No.4981 of 2012 titled as Vasdev and others Vs. Sukhdial Rai and others.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that one Narain Dass was having four sons, namely Hans Raj, Surjan Ram, Ramji Dass and Sarwan Ram, out of whom Hans Raj and Surjan Ram had died unmarried and issue less. The plaintiffs are sons of Surjan Ram whereas defendants Sukhdial Rai and Sansari Ram sons of Ramji Dass and defendants Pawan Kumar and Parminder Kumar are sons of Sukhdial Rai. Plaintiffs claim themselves to be legal heirs of their uncles Hans Raj and Surjan Ram and as such, entitled to inherit their estates, subject matter of the suit property described in the head note of the plaint. They claim to have come to know of an alleged mischief committed by defendant Sukhdial Rai in pursuance whereof he filed a suit for declaration against Hans Raj and Surjan Ram which he got decreed vide judgment and decree dated 06.06.1985. The judgment so passed is assailed by the plaintiffs by way of this suit on the grounds, i) Hans Raj was an educated person whereas his statement before the Court leading to judgment and decree, supra, bears his thumb impressions which is not expected from an educated person ii) as against Hans Raj and Surjan Ram being owners of only 67 Bigha 5 Biswas of land the judgment and decree dated 6.6.1985 has made him owner of 75 bighas 14 Biswas of land (iii) neither of Hans Raj or Surjan Ram was ever served in the proceeding culminating into judgment and decree dated 6.6.1985, they never appeared in the said court nor suffered any statement. The statements so recorded in the Court concerned are result of fraud and impersonation (iv) even if the plaintiffs were necessary and effective parties they were not impleaded as a party in civil suit No.156

of 6.5.1985. Also challenged by way of this suit is attestation of mutation No.342 of 19.8.1985 on the basis of judgment and decree dated 6.6.1985. Not only this, Surjan Ram is further accused of having got filed civil suit bearing No.39 of 22.1.1994 from his sons Pawan Kumar and others against him and succeeded in a judgment and decree being passed on 19.3.1994, by all means a collusive decree, fraudulently obtained. Sukhdial Rai was not entitled to suffer any such statement leading to the judgment and decree. Asserting that rights of the plaintiffs in subject matter of Civil Suit No.39 of 22.1.1994 remain unaffected thereby and so also mutation No.518 dated 2.7.1996 attested on the basis of judgment and decree dated 6.6.1985 have no bearing on their rights in the suit property. Judgments and decrees dated 6.6.1985 and 19.3.1994 are also assailed by the plaintiffs or not having been got registered with the Sub Registrar.

Upon notice, defendants appeared and filed their contesting written statements, raising more than one preliminary objections. Plaintiffs filed their replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

- “1. Whether the judgment and decree dated 6.6.85 and 19.3.94 are illegal and void?OPP
2. Whether the entries in the revenue record are wrong? OPP
3. Whether the suit is barred by time?OPP
4. Where the suit is not maintainable in the present form?OPD
5. Whether the plaintiffs are entitled to declaration and injunction prayed for? OPP
6. Whether Hans Raj and Surjan Ram became the owners of land measuring 74 Bighas 14 biswas alongwith other Abadi Land as alleged in para No.1 of the written statement? OPD

7. Whether the judgment and decree dated 30.6.1969 is null and void? OPP
8. Whether the Khewat of the parties is still joint? OPP
9. Whether mutation No.342 sanctioned on 19.08.1985 and mutation No.518 sanctioned on 2.7.1996 are illegal, null and void? OPP
10. Whether Hans Raj was an educated person and used to sign the documents? OPP
11. Whether Hans Ram and Surjan Ram executed valid Wills dated 25.10.1982 and 2.1.1975 respectively in favour of the defendant No.1 Sukhdial Rai? If so, its effect? OPD
12. Whether Sarwan Ram died on 25.7.1968 and Hans Raj and Surjan died in the month of May 1990 and April 1991 respectively and whether Ramji Dass father of defendant No.1 died on 3.5.1992, if so its effect on the claim of the plaintiff? OPD.
13. Relief.”

In order to prove their respective stands taken in their pleadings, both the parties brought on record the documentary as well as oral evidence. Voluminous evidence was brought on record. After hearing learned counsel for the parties and going through the record, learned trial court came to the conclusion that plaintiffs have miserably failed to prove their case for want of cogent and sufficient reasons. Accordingly, their suit for declaration was dismissed by the learned trial court vide its judgment and decree dated 27.05.2008.

Feeling aggrieved, plaintiffs filed their first appeal and defendants also filed their cross objections. Appeal filed by the plaintiffs came to be dismissed whereas cross objections filed by the defendants were allowed by the learned first appellate court vide its common impugned judgment and decree dated 25.1.2012. Hence, these two regular second appeals at the hands of unsuccessful plaintiffs against the same impugned judgment and decree.

Heard learned counsel for the appellants in both the appeals.

A bare combined reading of both the impugned judgments and decrees passed by the learned Courts below would show that the plaintiffs have miserably failed to make out a case. Appellants being plaintiffs, onus was on them to prove their pleaded case. However, the appellants failed to prove their case by leading the cogent and sufficient evidence. In such a situation, plaintiffs were bound to fail. That is what has been held by both the learned courts below, while recording their concurrent findings of facts, which deserve to be upheld. In this view of the matter, it can be safely concluded that the learned Courts below were well within jurisdiction to pass their respective impugned orders and the same deserve to be upheld.

Plaintiffs-appellants filed the present suit for declaration on 16.05.2000 laying challenge to the validity of civil court decrees dated 06.06.1986 and 19.03.1994. Since plaintiffs filed the suit for declaration, it was hopelessly time barred. Both the learned courts below returned their cogent and concurrent findings of facts on this issue as well. Learned counsel for the appellant could not raise any meaningful argument on the issue of limitation.

The appellants raised a plea of fraud but they failed to prove the said plea. It is very easy to raise the plea of fraud but it is equally difficult to prove the same. On the other hand, the defendants brought on record so convincing and voluminous evidence which was documentary as well as oral, that the learned courts below were left with no other option except to dismiss the suit of the plaintiffs. Under these undisputed circumstances, this Court is of the considered opinion that the learned courts

below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Defendants-respondents, on the other hand, duly proved the pleaded case by bringing on record very voluminous, cogent and well convincing evidence-documentary and oral. Both the earlier judgments and decrees Exhibits D-123 and D124 were rightly held to be genuine and valid judgments. Similarly, both the Wills Exhibits D-11 and D-14 were duly proved in accordance with law. In view of the quality and quantity of evidence brought on record by the defendants, the appellants-plaintiffs were very rightly non-suited by both the learned courts below. Thus, the impugned judgments and decrees deserve to be upheld, for this reason as well.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para Nos.25 to 27 of its impugned judgment, which deserve to be noticed here, read as under:-

“Apprehensions of defendants No.1 to 4 that findings of the learned Trial Court on issue No.11 are detrimental to their interest are mis-founded. Once judgment and decree, Ex.D.123 and Ex.D.124, have been held to be genuine and valid it would follow that the mement Ex.D.124 was passed Hans Raj and Surjan Ram were left with no right, title or interest in the suit property. Even if they may have executed Wills dated 25.10.1982 and 2.1.1975 in favour of defendant No.1 there was nothing left with them which could have been bequeathed upon defendant No.1 by virtue of these Wills. However still, it is deemed necessary to ascertain as to whether or not defendants have proved due execution of Will Ex.D11 said to be executed by

Surjan Ram and the other will Ex. D14 said to be executed by Hans Raj. Ex.D11 is a registered document executed on 2.11.1975. It is purportedly attested by Harsha Singh Lambardar of village Faguwal and Bant Singh resident of village Channo. By the time came the time to prove this Will in the Trial court, both of its attesting witnesses had finished their journey on this planet and had returned for their eternal abode. To take care of this situation, the defendants have examined DW2 Manjit Singh son of deceased Harsha Singh and claiming acquaintance with handwriting and signatures of his father. DW2 identified signatures of Harsha Singh on the Will dated 2.1.1975 executed by Surjan Ram Ex.D11. By examining DW2 the defendants did take care of requirements of Section 69 of Evidence Act which prescribes that if no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person. Ordinarily execution of a Will can be proved by examining one of the two attesting witnesses thereof, as per Section 68 of the Evidence Act, but if in case the attesting witnesses are not alive by the time comes the turn to prove the Will in a Court of Law then some one acquainted with the handwriting and signatures of one of the attesting witnesses has to be examined to prove signatures and hand writing of the deceased witness. Therefore, by examining DW2 the defendants are to be taken as having proved due execution of Will Ex.D11.

Execution of deed of mortgage D7 was got proved by examining DW7 Chiranji Lal one of the attesting witness of the Will and interestingly same Harsha Singh Lambardar is the attesting witness of deed of mortgage Ex.D85 as well. Likewise by examining Baghel Singh DW6, a son of Bhagwan Singh, one of the attesting witness of the Will Ex.D84, who has testified that his father Bhagwan Singh had expired about 11 months before December 2003 and being acquainted with his handwriting and signatures he is in a position to identify them same as DW2.

For all these reasons the defendants are held to have proved due execution of Will Ex.D11 and Ex.D14. No suspicious circumstances attending execution of these Wills could be brought out by the plaintiffs and consequently findings of the learned Trial Court on issue No.11 are set aside and reversed and are answered in favour of the defendants/ cross objector.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[Rameshwar Singh Malik]
Judge

16.08.2017

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No