

RSA No. 4113 of 2015 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 4113 of 2015 (O&M)

Date of Decision: 13.9.2017

Raj Kumar

.....Appellant

Vs.

Gurbachan Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Aman Dhir, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful defendant No.1 is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for declaration and permanent injunction filed by the plaintiff was decreed by the learned trial court vide its impugned judgment and decree dated 13.2.2014 and first appeal of defendant No.1 was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 5.1.2015, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that plaintiff instituted suit for declaration to the effect that the judgment and decree dated 3.9.2005 was result of collusion in between defendants No.1 to 3 and the appointment of Local Commissioner and the sale deed bearing Wasika No. 2542 dated

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12.12.2005 in favour of defendants No.1 and 2 in respect of land measuring 31 kanals 12 marlas, more fully detailed and described in the heading of the plaint, were illegal, null and void and as such, were liable to be set aside and the said sale deed being more than share, was also liable to be set aside and the revenue record in that respect was liable to be corrected. Plaintiff also sought declaration to the effect that agreement dated 14.8.2004 and the judgment and decree dated 3.9.2005 were also illegal, null and void and were liable to be set aside. The plaintiff also sought relief of permanent injunction thereby restraining defendants No.1 and 2 from alienating the land in dispute measuring 31 kanals 12 marlas in any manner to any person and also for restraining them from causing any interference or dispossessing the plaintiff from the abovesaid land illegally and forcibly, except in due course of law.

It was alleged by the plaintiff that he was real brother of defendants Nos.3 to 9 and defendant No.4-Chand Kaur was their mother and their land was joint as no partition was taken place. Father of plaintiff and defendants No.3 to 9 were three brothers namely Chand Singh, Sham Singh and Hakam Singh sons of Bhagwan Singh and plaintiff and defendants No.3 to 9 were descendants of Sham Singh. It was further alleged that the three sons of Bhagwan Singh were owners in possession of Khatauni No. 133 and 134. Munshi Singh son of Ram Singh son of Jarnail Singh was the owner in possession of land, as shown in jamabandi for the year 1999-2000. Sham Singh expired and his inheritance was mutated in the name of his heirs equally and each co-sharer got 9 kanals 9 marlas of land. Some of the co-shares and plaintiff sold some land to Lajpat Rai and consequently, defendants No.1 to 3 were having no relation with that. Defendant No.4 and

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plaintiff as well as defendants No. 5 to 9 remained in possession as owner to the extent of their respective shares, including defendant No.3, who was having 9 kanals 9 marlas.

It was further averred in the plaint that defendant No.3, in order to cause loss to defendants No. 4 to 9 and in connivance with defendants No.1 and 2, created an agreement dated 14.8.2004 qua the land which stood in the name of defendants No. 4 to 9 and on the basis of said agreement, defendants No.1 and 2 filed civil suit bearing No. 347-1 of 10.8.2005, which was decreed on 3.9.2005 on account of connivance of defendants Nos. 1 to 3. However, neither the agreement nor the said decree was binding upon the other co-sharers as it contained land measuring 31 kanals 12 marlas, but this fact was suppressed in the said suit. Afterward, a Local Commissioner was got appointed on the basis of decree dated 3.9.2005 and vide wasika No. 2542 dated 12.12.2005, land measuring 31 kanals 12 marlas was transferred in the name of defendant No.1 and 2 in execution No. 58 dated 14.1.2006, though, defendants No.1 and 2 were not having any right. Defendant No.8-Karnail Singh also filed criminal complaint against defendants No.1 to 3, which was pending. When defendants No.1 and 2 tried to obtain possession from defendants No. 4 to 8, they came to know about obtaining of decree on false facts.

Defendants were put to notice. Defendants No. 4 and 6 did not appear despite due service and they were proceeded against ex parte by the learned trial court, vide its order dated 24.12.2008. Defendant No. 7 was stated to be dead. Defendants No. 3, 5, 8 and 9 also failed to appear despite service by way of proclamation and they were also proceeded against ex parte, vide order dated 2.4.2009. Defendant No.1 appeared and filed his

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contesting written statement, raising more than one preliminary objections.

Plaintiff filed his replication. On completion of pleadings of the parties,

learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to declaration as prayed for?OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP
3. Whether the suit of plaintiff is not maintainable in the present form?OPD
4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Whether suit is time barred?OPD
6. Whether the suit is hit by res-judicata?OPD
7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD
- 8 Relief?

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has duly proved his case. Accordingly, his suit for declaration and permanent injunction was decreed by the learned trial court, vide its impugned judgment and decree dated 13.2.2014. Judgment and decree dated 3.9.2005 in civil suit No. 374-1 of 10.8.2005 were found the result of collusion between defendants No. 1 to 3, thus, these were declared null and void.

Defendant No.1 felt aggrieved and filed his first appeal which was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 5.1.2015. Hence this regular second appeal at the

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hands of unsuccessful defendant No.1.

Heard learned counsel for the defendant No.1-appellant.

It has gone undisputed on record that defendant No.3 was owner to the extent of 1/24th share which comes to land measuring 9 kanal 9 marla. However, proceeding on a malafide intention and in collusion with defendants No.1 and 2, defendant No.3 suffered abovesaid decree dated 3.9.2005 in favour of defendants No. 1 and 2 despite the fact that defendant No.3 was not competent to do so. Thus, the learned courts below were well justified in recording their concurrent findings of facts on this crucial aspect of the matter and the decree dated 3.9.2005 challenged by way of suit for declaration by the plaintiff was rightly set aside, decreeing the suit of the plaintiff. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

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 14 to 16 of its impugned judgment, which deserve to be noticed here, read as under:-

“Keeping in view of above evidence brought by both the parties, learned lower court has appreciated the fact that plaintiff and defendants No. 3 to 9 were descendants of Sham Singh having 1/24th share each in the land holding of Sham Singh. Plaintiff has challenged the agreement allegedly executed by defendant No.3 in favour of defendants No.1 and 2

qua suit land, which fell to his share on the ground that there is a collusion and connivance of defendants No.1 to 3. On this account, it is worth mentioning that a criminal complaint was also instituted, which is pending. Further, defendants No.1 and 2, in collusion with defendant No.3, have hatched a conspiracy and instituted civil suit by obtaining a consent decree to the extent of 31 kanals 12 marlas of the land, though, defendant No.3 was neither competent to sell away this much portion of the suit property nor he was having any such attorney or authority on behalf of other defendants as well as on behalf of plaintiff. As such, in the absence of any such authority or attorney, the passing of decree as well as judgment in favour of defendants No.1 and 2 have come under cloud.

Another interesting material in this case is that the judgment was passed just within a period of 23 days after institution of the suit due to admissions by defendant No.3. As such, the collusion and connivance has been apparently proved by present plaintiff namely Gurbachan Singh, who is now respondent before this Court. Due to these circumstances, learned lower court has rightly evaluated and appreciated the material evidence brought on record and arrived at the conclusion that no act of court of law based on justice can prejudice any one and the previous judgment is an act of judicial error. Due to these observations, learned lower court has set aside the entire judgment as well as decree after appreciating the material evidence brought on record. Accordingly, contention raised by learned counsel for appellant that the suit is required to be decreed only to the extent of share of respondent No.1 neither carries any weight and nor found to be plausible. It has also been proved on record that the plaintiff was neither party to the agreement and nor to the civil suit as well as to the execution, therefore, he was not having any knowledge of the passing of decree or confirmation of sale and same has been challenged through the present suit as and

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when it has come into their knowledge. Accordingly, learned lower court has rightly delivered the findings that the plaintiff is entitled for declaration as well as for permanent injunction qua suit property as he has cause of action to protect his civil right and suit is maintainable. Accordingly, findings delivered on issues No.1 to 4 are found to be well reasoned and legal, which are hereby affirmed.

Learned counsel for appellant also challenged the findings on issues No. 5 to 7 on account of the fact that the judgment and decree were not previously challenged, but plaintiff has been successful to prove the fact that the same has been challenged, when it has come into his knowledge. Moreover, no such evidence has been brought by the contesting defendant, which proves the fact that the suit of the plaintiff is time barred or the same is hit by principle of res-judicata, therefore, findings recorded on these issues are also found to be reasonable and legal and not suffering from any kind of arbitrariness, which are hereby upheld.”

When learned counsel for the appellant was confronted with the abovesaid findings recorded by the learned first appellate court to point out any patent illegality or perversity therein, he had no answer and rightly so, it being a matter of record. In fact, the learned courts below considered each and every relevant aspect of the matter before recording their concurrent findings of facts, which have been found based on sound reasons. In this view of the matter, no fault can be found with the impugned judgments and decrees passed by the learned courts below and the same deserve to be upheld, for this reason also.

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

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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.

13.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No