

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

RSA No. 5834 of 2016 (O & M)

Date of Decision:-02.03.2017

Satbir and others

...Appellants

Versus

Kuldeep and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. S.K. Tripathi, Advocate
for the appellants.

HARI PAL VERMA J.

C.M. No.15315-C of 2016

This is an application seeking condonation of delay of 206 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 206 days in filing the appeal is condoned.

RSA No.5834 of 2016

The appellants/plaintiffs (hereinafter called 'the plaintiffs') have filed the present regular second appeal against the judgment and decree dated 12.1.2016 passed by learned District Judge, Faridabad whereby their appeal against the judgment and decree dated 16.12.2014 passed by learned Civil Judge (Junior Division), Faridabad, was dismissed.

Briefly stated plaintiffs have filed a suit for declaration along with relief of permanent injunction claiming to be joint owner in possession of the suit land as detailed in the plaint. However, father of respondents/defendants (hereinafter called 'the defendants') No.1 to 3 and husband of defendant No.4, namely Asha Ram had obtained a civil decree vide judgment dated 27.9.2003 from the Court of Civil Judge (Junior Division), Faridabad in case titled 'Asha Ram vs. Satbir and others' by way of fraud and impersonation. Therefore, the declaration is sought that the said decree is to be declared illegal, null and void and not binding upon the rights of the plaintiffs as the suit land was purchased by the plaintiffs from their own funds. The land was never merged into the joint property as plaintiffs and late Asha Ram were residing separately. The plaintiffs had never been served in the aforesaid suit titled 'Asha Ram Vs. Satbir and others'. Since the plaintiffs have failed to prove that fraud has been practised upon them while obtaining the said decree and have neither examined any hand writing expert nor have placed on record any other evidence to prove that any fraud has been practised upon them while obtaining the said decree, the suit was dismissed by the trial Court vide judgment and decree dated 16.12.2014.

Aggrieved against the said judgment and decree dated 16.12.2014, the plaintiffs filed an appeal. However, the said appeal was also dismissed vide judgment and decree dated 12.1.2016 by the lower Appellate Court while observing as under :-

“12. The appellants-plaintiffs by virtue of the present suit

instituted on 2.2.2011 has challenged the legality and validity of the judgment dated 27.9.2003 after about 7½ years whereas the limitation to institute a suit for declaration has been stipulated to be 3 years. In the entire plaint, there is no averment to suggest even remotely as to when for the first time the appellants-plaintiffs came to know about the judgment and decree dated 27.9.2003 and in para no.4 of the plaint, the plaintiffs have simply pleaded that the defendants declined the legitimate request of the plaintiffs finally on 13.1.2011. Since the plaintiffs have claimed themselves to be the owners in possession of the disputed property and after handing down of the judgment dated 27.9.2003, mutation Ex.P7 in this regard has been sanctioned in favour of Asha Ram, predecessor-in-interest of the defendants in the year 2004, so, the plaintiffs cannot claim that they were not in the knowledge of the judgment and decree and in these circumstances, even the suit instituted by the appellants-plaintiffs is hopelessly time barred.”

It is in these circumstances the appellants/plaintiffs have filed the present regular second appeal.

Learned counsel for the appellants has raised the following substantial questions of law in the present appeal :-

- “ i) Whether the appellants/plaintiffs are owner of the suit land purchased by them vide its sale deed dated 04.10.1989 ?
- ii) Whether the family settlement can be done in the self acquired property between the brothers ?
- iii) Whether the civil suit can be decided without framing of

issues ?

- iv) Whether the impugned judgments and decrees of both the learned Courts below are perverse to the evidence available on file of the case ?
- v) Whether both the learned Courts below have misread the documents and misconceived the evidence while delivering the impugned judgments and decrees ?
- vi) Whether the findings of the learned lower Appellate Court and the learned trial Court are based on no evidence and hypothetical considerations ?
- vii) Whether the impugned judgments and decrees of both the learned Courts below are liable to be set aside ?”

Learned counsel for the appellants/plaintiffs has argued that the findings recorded by the Courts below are perverse to the evidence adduced by the parties. Therefore, the judgments and decrees passed by the Courts below are liable to be set aside. The fact that plaintiffs have purchased the property in question vide sale deeds dated 4.10.1989 (Ex.P8) and (Ex.P9) from their own funds, has been wrongly discarded. No family settlement to relinquish the entire property between the brothers can take place. Therefore, the decree, which is based upon the alleged family settlement dated 15.8.2002 is a total nullity.

I have heard learned counsel for the appellants.

The claim of the plaintiffs revolves around the judgment and decree dated 27.9.2003 in a case titled as 'Asha Ram vs. Satbir and others'

and since the plaintiffs have failed to prove that fraud, if any, has been committed while obtaining the said decree, both the Courts have recorded findings of facts against plaintiffs. The plaintiffs have not adduced any evidence in support of their contention that while obtaining the judgment and decree dated 27.9.2003 any fraud or misrepresentation was ever committed. Even the suit challenging the judgment and decree dated 27.9.2003 has been instituted in the year 2011 i.e. after a period of eight years of the judgment without showing any sufficient cause and therefore, the suit was hopelessly barred by limitation. Though the plaintiffs have challenged the judgment and decree dated 27.9.2003 on the ground of fraud and misrepresentation, but no evidence has been adduced except plaintiff Satpal (PW1), who while tendering his affidavit Ex.PW1/A in evidence, tried to substantiate the averments as taken in the plaint. Except his bald statement there is nothing on the file to corroborate his statement. Perusal of the file shows that in the case titled 'Asha Ram vs. Satbir and others' the plaintiffs (being defendants in the said suit) had put in appearance before the Civil Court and had filed the written statement (Ex.P2), which also bears the signatures of the respondents/defendants and thereafter on 7.4.2003 their joint statement (Ex.P3) was recorded, wherein they have stated before the Court that they have no objection if the suit of the plaintiffs is decreed.

Since the plaintiffs themselves have appeared in the Court and filed their written statement, they cannot say that any fraud has been played upon them. The challenge to the validity of the judgment dated 27.9.2003

by way of present suit instituted on 2.2.2011, which has been filed after about 7 ½ years whereas the limitation to institute a suit for declaration has been stipulated to be three years. Interestingly, there is no averment in the entire plaint, which suggests that as to when the plaintiffs have come to know about the judgment and decree dated 27.9.2003. Thus, it being a case of concurrent finding of facts recorded by the Courts below, no interference is warranted.

No substantial question of law is involved in the present regular second appeal. Therefore, the impugned judgments and decrees passed by the Courts below are upheld and the present regular second appeal is dismissed.

March 02, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No