

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

RSA No. 6179 of 2016

DATE OF DECISION : 08.11.2017

Smt. Munseera and another

.... APPELLANTS

Versus

Noora and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Satish Chaudhary, Advocate,
for the appellants.

* * *

AVNEESH JHINGAN, J.

This is regular second appeal filed by the plaintiffs against the dismissal of their suit for declaration.

For the sake of convenience, the parties are being referred to as per their original position in the civil suit.

The plaintiffs filed a suit for declaration to the effect that the relinquishment deed bearing document serial No. 2708 dated 29.11.2012 and subsequent mutation No. 2064 and other relevant documents i.e. documents bearing serial No. 3377 dated 26.02.2013, 3376 dated 26.02.2013 and 54 dated 08.04.2013 be declared illegal, null and void, inoperative, wrong and same are not binding on the inheritance rights of the plaintiffs. A decree for permanent injunction was also sought to restrain the

defendants from further alienating and dispossessing the plaintiffs from the agricultural land detailed in the suit.

The facts averred by the plaintiffs are that defendant No.1 is recorded as owner of the suit land and the same is ancestral property of the plaintiffs. Defendant No.2 is real daughter of defendant No.1 and mother of defendant No.1 had expired. Defendant No.1 contracted second marriage with proforma defendant who gave birth to defendant No.3, father of plaintiffs No.2 and 3 and husband of plaintiff No.1. It was alleged that defendant No.2 was adamant to grab the suit property and she along with her accomplice kidnapped defendant No.1. It was stated that several applications were made against defendant No.2 and her accomplice for taking legal action but ultimately, all the proceedings initiated were withdrawn. It was further averred that defendant No.2 succeeded in executing the relinquishment deed bearing serial No. 2708 dated 29.11.2012. The said relinquishment deed was executed in collusion with Tahir Numberdar and Aabid, without any knowledge and notice to the plaintiffs, proforma defendant and defendant No.3. The plaintiffs came to know about this after they received written statement of defendants No.1 to 3 that defendant No.2 transferred the suit land to defendant No.4 vide sale deed No. 3000 dated 11.01.2013 without any sale consideration. Defendant No.4 further sold the suit land to defendants No.5 to 8 vide sale deeds bearing serial No. 3377 and 3376, both dated 26.02.2013, and sale deed bearing No. 54 dated 08.04.2013. It was alleged that all these sale deed were without consideration just to deprive the valuable right of the plaintiffs over

the suit property. In the above stated circumstances, the plaintiffs filed the suit.

On notice, defendants No.1 to 3 filed written statement raising preliminary objections and denying all the averments of the plaint on merits.

Defendants No.4 to 8 filed their separate written statement.

Replication to the written statements was not filed.

The learned trial court framed the following issues :-

- (1) Whether the plaintiff is entitled for the relief of a decree of declaration as prayed for ? OPP
- (2) Whether the plaintiff is entitled for the relief of permanent injunction, as prayed for ? OPP
- (3) Whether the suit of the plaintiff is not maintainable?OPD
- (4) Whether the plaintiff has no locus standi and cause of action to file the present suit ? OPD
- (5) Whether the plaintiff is estopped from filing the present suit by his own act, conduct acquiescence and laches?OPD
- (6) Whether the plaintiff has not come to the Court with clean hands ? OPD
- (7) Relief.

After framing of issues, the case was fixed for evidence but inspite of number of opportunities including last opportunity given to the plaintiffs, no evidence was produced. The plaintiffs' evidence was closed by the learned trial court by court order.

Since no evidence was produced to substantiate the claim made in the suit, learned trial court dismissed the suit vide judgment and decree dated 05.07.2014.

Aggrieved of the said judgment and decree, an appeal was filed by the plaintiffs, which was dismissed by the learned first appellate court vide judgment and decree dated 13.05.2016.

Hence, the present regular second appeal.

Learned counsel for the appellants contended that the learned courts below erred in dismissing the suit of the plaintiffs. He argued that since plaintiff No.1 (mother of plaintiffs No.2 and 3) was murdered in October, 2014, it was because of this reason that no evidence or witness could be produced before the learned trial court. He further contended that FIR No. 458 dated 22.10.2014 regarding murder of plaintiff No.1 was registered at Police Station Punhana. Though three questions of law were framed in the present appeal, but learned counsel for the appellants only pressed the above recorded contention.

A perusal of the paper-book reveals that the suit was instituted on 11.03.2013 and the same was dismissed on 05.07.2014. The plaintiff No.1 was allegedly murdered in October, 2014. Meaning thereby that during the pendency of the suit proceedings, she was alive. The learned trial court had specifically recorded that numerous opportunities including last opportunity were afforded to the plaintiffs to adduce evidence, and it was thereafter that by the court order, evidence was closed. Learned counsel for the appellants very fairly stated that the order closing the evidence was not challenged. In the circumstances mentioned above, the submission made by learned counsel for the appellants is bereft of merits and deserves rejection. The death/murder of plaintiff No.1 was later in time and same cannot be a

reason for not adducing witnesses and evidence before the learned trial court. In absence of any evidence, the learned trial court was left with no other option but to dismiss the suit.

During the course of hearing, learned counsel for the appellants could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

The cogent findings recorded by the learned first appellate court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decree passed by the first appellate court and the same deserves to be upheld.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

November 08, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes