

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 31.08.2017

1. RSA No.6099 of 2015 (O&M)

Suresh Kumar

... Appellant

Vs.

Smt. Dharam Bai and another

... Respondents

2. RSA No.2429 of 2016 (O&M)

Suresh Kumar

... Appellant

Vs.

Smt. Santosh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Keshav Partap Singh, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical regular second appeals, at the hands of plaintiff, directed against the concurrent findings of facts recorded by both the learned Courts below, are being decided together vide this common order, as both these appeals are arising out of similar set of facts and raise identical issues for consideration. Two separate suits for declaration and permanent injunction filed by the plaintiff-appellant, challenging two sale deeds, were dismissed by the learned trial Court and two identical first appeals were also

dismissed by the learned first appellate Court. However, for the facility of reference, facts are being culled out from RSA No.6099 of 2015 (Suresh Kumar Vs. Smt. Dharam Bai and another).

Brief facts of the case, as noticed by learned first appellate Court in paras 2 and 3 of its impugned judgment, are that present appellant-plaintiff has filed a suit for declaration to the effect that he was owner in possession of land measuring 21 kanals 13 marlas, as fully detailed and described in the head note of the plaintiff, situated at village Manheru, Tehsil and District Bhiwani and defendants had no right, title or interest in the same and further sale deed bearing No.5020 dated 03.10.2008 in respect of the suit land executed by defendant No.2 in favour of defendant No.1 was illegal, null and void and not binding on the rights of the plaintiff. Further, plaintiff also sought decree for permanent injunction restraining defendant No.1 from alienating the suit property on the basis of impugned sale deed No.5020 dated 03.10.2008.

It was pleaded by the plaintiff that Adisal Singh alias Risal Singh was owner in possession of the suit property. Defendant No.2 was the widow of Adisal Singh and plaintiff was his adopted son, who was adopted by Adisal and defendant No.2 at the age of 10 years vide registered adoption deed No.306 dated 22.01.2001. Further, it was pleaded that defendant No.2 was also the consenting party in taking the plaintiff in adoption and she was one of the witness of the adoption deed. Said Adisal Singh alias Risal Singh transferred the land in dispute to the plaintiff by suffering a decree dated 03.10.2002 passed in civil suit No.151 titled as Suresh Versus Risal Singh, passed by the then learned Additional Civil Judge (Senior Division), Bhiwani. Mutation No.3874 was sanctioned on 17.07.2003 and possession of the plaintiff as owner over the suit

property since 03.10.2002 was quite peaceful, continuous, regular and without any interference from any quarter. Defendant No.2 had entertained malafide and with an intention to grab the suit property by concealing the factum of adoption of the plaintiff in collusion with Halqa Patwari, got entered mutation No.4368 of inheritance after death of Sh. Adisal Singh alias Risal Singh, who died on 26.11.2007. However, on objection raised by the plaintiff, the said mutation was rejected by A.C. IInd Grade, Bhiwani on 15.06.2008. The possession of the suit property was with the plaintiff since the day of decree dated 03.10.2011. The defendants had no right, title or interest whatsoever with the land in dispute. Further, it was pleaded that defendant No.2 was not competent to execute the sale deed in favour of defendant No.1 and when the plaintiff became aware of the impugned sale deed, he requested the defendants to get the sale deed cancelled, but they had refused. Defendant No.1 threatend to alienate the suit property to defeat the rights of the plaintiff.

Defendants were put to notice. They appeared and filed their separate written statements. Defendant No.1, who was claiming herself to be a bonafide purchaser, filed her contesting written statement, raising more than one preliminary objections. It was pleaded by defendant No.1 that her vendor-defendant No.2 was absolute owner in possession of the suit land, which was purchased by defendant No.1 for due consideration. Defendant No.2 filed her separate but contesting written statement supporting the stand taken by defendant No.1.

On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to the declaration as prayed

for? OPP

2. Whether the plaintiff is entitled to the decree of relief of permanent injunction as prayed for? OPP
3. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPD
4. Whether the suit is not maintainable in the present form?
OPR
5. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After appreciating the evidence brought on record and hearing learned counsel for the parties, learned trial Court came to the conclusion that plaintiff failed to prove his pleaded case for want of cogent and sufficient evidence. Accordingly, suit for declaration and permanent injunction was dismissed by the learned trial Court vide its impugned judgment and decree dated 18.10.2012. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by learned first appellate Court, vide its common impugned judgment and decree dated 21.07.2015. Hence these two identical regular second appeals at the hands of the unsuccessful plaintiff.

Heard learned counsel for the appellant in both these connected appeals.

Undisputed facts available on record are that the entire case of the plaintiff-appellant was based on his alleged adoption deed dated 22.01.2001. He claimed himself to be the adopted son of defendant No.2 Smt. Harbai and her husband Sh. Adisal Singh @ Risal Singh son of Kanhiya. It is also a matter of

record that defendant No.2 and her husband Sh. Adisal Singh @ Risal Singh themselves challenged the said adoption deed by way of suit for declaration, which came to be allowed. Said adoption deed was not found to be a genuine document.

The litigation between the parties regarding said adoption deed which was the only basis of entire case of the appellant-plaintiff, came to be finalized against the plaintiff-appellant upto this Court. Once that is so, plaintiff has no case either on facts or in law right from day one and he has been rightly non-suited by both the learned Courts below by recording concurrent findings of facts. 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.

Plaintiff, by way of instant unwarranted litigation, sought to challenge the sale deed bearing No.5020 dated 03.10.2008 executed by defendant No.2 in favour of defendant No.1 in both these cases. Vendor was the same, but the vendees were different in both these suits. After the death of Sh. Adisal Singh @ Risal Singh, suit property owned by him, was inherited by his widow Smt. Harbai-defendant No.2. Once defendant No.2 was absolute owner of the suit property, she had every right to execute the sale deed in favour of defendant No.1.

The argument raised by learned counsel for the appellant that the adoption deed as well as the consent decree dated 03.10.2002, which was suffered by Sh. Adisal Singh @ Risal Singh in favour of the plaintiff, came to be set aside by the learned Court of competent jurisdiction in the year 2010 vide judgment and decree dated 09.10.2010, has been duly considered, but the same

has not been found worth acceptance, for the reason that adoption deed as well as the consent decree, which were the sole basis for entire claim of the plaintiff, had already been doubted and ultimately the adoption deed as well as the consent decree dated 03.10.2002 came to be set aside by the learned trial Court and the said decree was upheld against the plaintiff upto this Court.

Had the adoption deed and consent decree dated 03.10.2002 would not have been set aside, the fact situation would have been entirely different and in favour of the plaintiff-appellant. However, once the plaintiff had lost upto this Court, he was no more in a position to claim himself to be the adopted son of Sh. Adisal Singh @ Risal Singh and defendant No.2 Smt. Harbai nor there was any document of title in his favour, because the consent decree dated 03.10.2002, allegedly suffered by Sh. Adisal Singh @ Risal Singh in favour of the plaintiff, had also been set aside. Under these undisputed circumstances of the case, it can be safely concluded 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.

Before arriving at his judicious conclusion, learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned first appellate Court in para 21 of the impugned judgment, which deserve to be noticed here, read as under: -

“The only question to be determined in the present case is whether Risal Singh alias Adisal Singh had adopted the plaintiff and whether he had suffered decree. The question involved also is

whether any fraud was played upon him. Admittedly, consent decree and adoption deed have been challenged in the separate civil suit. The adoption deed had been challenged by late Shri Adisal Singh alias Risal Singh during his lifetime and after his death on 26.11.2007 by Smt. Harbai by filing a civil suit no.120 dated 13.06.2003. The said suit was decided by the court of Civil Judge (Junior Division), Bhiwani, on 09.10.2010 and it was held that plaintiff is not adopted son of late Adisal Singh alias Risal Singh and Harbai and even set aside the consent decree dated 03.10.2002 passed in civil suit No.151 of 2002. The judgment dated 09.10.2002 passed by the learned CJ (JD), Bhiwani, is available on the file in the shape of Ex.D-2. Appeal against the said judgment was dismissed before the learned appellate court in civil appeal No.91 of 2011 titled as Suresh Kumar Vs. Harbai decided on 27.02.2013 and learned counsel for the appellant stated at bar that the appeal against the order of appellate court has already been dismissed before the Hon'ble High Court. When the adoption deed has already been set aside by civil court then plaintiff has no right or concern with the suit property and it cannot be held that plaintiff is adopted son of Adisal Singh alias Risal Singh. Once it is proved that plaintiff is not adopted son of Adisal alias Risal Singh, then plaintiff has no right to challenge the sale deed No.5021, dated 03.10.2008.”

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 and decrees passed by the learned Courts below, which may warrant interference at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. Further, no questions of law, much less substantial question of law, has been found involved in the present appeals enabling this Court to entertain these two identical regular second appeals. It is so said because involvement of substantial questions of law is sine qua non for entertaining the regular second appeal, as held by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 both these appeals are wholly misconceived, bereft of merit and without any substance, thus, these must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, both these regular second appeals stand dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

31.08.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No