IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4145 of 2014 (O&M)
Date of Decision:14.9.2017

Satpal ... Appellant

Versus

Shiela and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Dalip Kumar Tuteja, Advocate for the appellant

RAJIV NARAIN RAINA, J. (Oral)

CM No.9612-C of 2014

This is an application for condonation of delay in re-filing this appeal which is supported by an affidavit. For the reasons recorded therein, CM is allowed and the delay of 7 days in re-filing this appeal is condoned.

CM No.9613-C of 2014

This is an application for condonation of delay in filing this appeal which is supported by an affidavit. For the reasons recorded therein, CM is allowed and the marginal delay of 4 days in filing this appeal is condoned.

RSA No.4145 of 2014

1. This is an appeal filed by the defendant in a suit instituted by the plaintiffs, respondents no.1 to 6 herein. Defendants no.2 and 3, Shamsher Singh and Balbir Singh sons of Hari Singh have not joined Satpal Singh son of Bhagat Singh in this appeal although they were co-plaintiffs now are arrayed as proforma respondents.

2. The suit was filed for declaring the judgment and decree dated 26th May, 1982, Mutation No.2258 dated 21st September, 1982, sale deed No.1236 dated 27th May, 2002, Mutation No.3329 dated 23rd November, 2002

and mortgage deed No.3336 dated 23rd November, 2012 as null and void and not binding upon the rights of the plaintiffs and for setting aside the same with consequential relief of permanent injunction so as to restrain the defendants no.1 to 4 from alienating the suit property and with a direction to defendant no.4 not to execute any documents on the basis of the impugned mutations and sale deeds etc.

3. The suit property once belonged to late Bhagat Singh, father of defendant no.1-Satpal and plaintiffs no.2 to 5, namely, Siri Pal, Rajesh Devi, Sudesh Devi and Suresh Devi, respectively. Bhagat Singh, father of defendant no.1-Satpal, and plaintiffs no.2 to 5, namely, Siri Pal, Rajesh Devi, Sudesh Devi and Suresh Devi and husband of plaintiff no.1, Shiela [who died in the year 2000] and Jagdish plaintiff no.6 were owners in possession of 2/3rd share in ancestral property described in paragraph 2 of the plaint which is the property in dispute. Satbir, Bhagat Singh and Jagdish were brothers and owners with 1/3rd share in the joint suit property.

4. The present appellant, Satpal had filed a suit against his father, Bhagat Singh in the Court of Senior Sub Judge, Rohtak which was decided on 26th May, 1982. Plaintiffs claimed that the decree was illegal and non est as they were not parties thereto. In that suit, Satpal impleaded his father Bhagat Singh and his uncle Jagdish as defendans and obtained a decree transferring their entire 2/3rd share measuring 43 kanals 18 marlas in favour of the appellant, Satpal. The suit was titled "Satpal vs. Bhagat Singh etc.". Satpal claimed to be ostensible owner in possession of the suit land the plaintiffs have no right, title and interest whatsoever therein. The decree had been given effect to and mutation was sanctioned on the basis of the decree. Defendant, Satpal asserted that the decree was in the knowledge of the plaintiffs from the very beginning and the story that they got knowledge of the decree in June, 2003

was an effort to by-pass the law of limitation. Defendant no.1, Satpal executed sale deed on 27th May, 2002 to Balbir Singh, defendant no.3 for consideration of ₹ 2,20,000/-. Defendant no.1 admitted that 160/517th share was mortgaged to defendant no.2 while defendant no.3 took the defence of bona fide purchaser for valuable consideration, without notice. The suit was dismissed as withdrawn on the statement made by plaintiff no.6. Defendant no.2 was given up as unnecessary party by the plaintiff by statement entered on 22nd October, 2003. Defendant no.4 filed written statement objecting that the suit was not maintainable against defendant no.1 as no notice under Section 80 CPC had been served upon State Government or it designated officer nor was the official impleaded proper or necessary party to the suit. The plaintiffs filed replication reiterating their version in the plaint. Five issues were framed to answer whether the judgment and decree dated 26th May, 1982, the Mutation No.2258 dated 21st September, 1982, the sale deed No.1236 dated 27th May, 2002, the Mutation No.3329 dated 23rd November, 2002 and the mortgage deed No.3336 dated 23rd November, 2002 are null and void and not binding on the rights of the plaintiffs; also whether the suit of the plaintiff is not maintainable in the present form; whether the suit is time barred; whether plaintiffs have no locus standi to file the present suit and they are estopped by their own act and conduct from filing it and lastly what relief were the plaintiffs entitled to?. Parties led their evidence in support of their respective cases and produced oral and documentary evidence in support of their respective cases.

5. The entire controversy revolved around whether there was a judgment and decree dated 26th May, 1982 in existence. The findings of fact recorded by the learned trial court are clear and categorical holding that there is no documentary evidence regarding the alleged judgment and decree dated 26th May, 1982. Plaintiffs placed on record application forms in District Court

office for obtaining certified copy of the judgment and decree Ex.P-2 and P-3, but they were returned by the court staff with the report that the suit file with which the judgment and decree arose was not deposited/consigned with them. PW4 Om Parkash, the dealing hand from the office of the Deputy Commissioner, Rohtak and another official witness PW5 Roshni Devi from the ADRK DC Office, Rohtak deposed that in Column No.13 of Mutation No.2258, Ex.P-5 there is no mention of the fact as to who was the Senior Sub Judge and who had passed the decree dated 26th May, 1982. Even on the *Khulasa* decree, there is no mention of the case number or the name of the judge who had passed the decree. There is no *Goshwara* number on the said mutation No.2258. In the absence of production of the judgment and decree, title could not be said to have passed to Satpal and an adverse inference has to be drawn against the him on whom the onus was to produce and prove the existence of the decree. In short, the alleged decree did not find mention in the revenue papers with any certainty or identification. The trial court held that it was amply clear that Satpal was not owner in possession of the suit land which was sold to defendant no.3 vide sale deed dated 27th May, 2002 on which Mutation No.3329 dated 23rd November, 2011 was entered upon. The trial court was right in observing that a person cannot sell what he does not own. Merely money changing hands between defendant no.1 (Satpal) and defendant no.3 would not make the vendee owner of the suit property.

6. The trial court read a distinct recital at page 5 of the sale deed dated 27th May, 2002 wherein it was incorporated that defendant Satpal would be responsible in case of defective title which in the present case is found existing after trial closure. On these premises, the trial court declared the sale deed and the consequent mutation null and void and liable to be set aside on the ground that Satpal was not owner in possession of the land who could not

pass title to third party. It appears that fraud was committed by Satpal, defendant no.1 and when fraud is played, limitation runs from the date of knowledge of the fraud committed and parties would be governed by Article 59 of the Limitation Act, 1963 which fixes the starting point of limitation in such case from the date of knowledge of the alleged fraud. There was every reason to believe the averments in the plaint that it was in June, 2003 that plaintiffs came to know about the fraudulent decree on which the rights of Satpal were based. The suit was filed within three years of knowledge, and therefore, was within limitation. Accordingly, the suit was decreed by the learned Civil Judge (Jr.Division), Rohtak vide judgment and decree dated 1st February, 2011.

7. In appeal, the unsuccessful defendant no.1, Satpal could not change the tide against him in the face of proven facts and non-existence of the judgment and decree allegedly dated 26th May, 1982 to which the plaintiffs were never parties. The learned District Judge, Rohtak vide his judgment and decree dated 20th February, 2014 dismissed the appeal. The findings of both the courts below are concurrent that defendant, Satpal had failed to prove the existence of passing of the judgment and decree and in reality, no such judgment and decree was in existence and as a result, the appellant lost title of the entire suit land. In such a situation it could not be said that Satpal was an ostensible owner of the entire suit property. The learned District Judge applied the principle of Section 41 of the Transfer of Property Act, 1882 that where with the consent express or implied of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that transferor was not authorised to make it; provided that the transferee after

taking reasonable care to ascertain that the transferor had power to make the transfer has acted in good faith.

8. A reading of Section 41 of the Act indicates four conditions to be met, namely, (1) the transferor is the ostensible owner; (2) he is so by the consent, express or implied, of the real owner; (3) the transfer is for consideration; and (4) the transfer has acted in good faith taking reasonable care to ascertain that the transferor had power to transfer. On this, the first appellate court observed that on facts in the present case, conditions no.3 and 4 are satisfied as the defendant no.1 had purchased part of the suit land for consideration after taking reasonable care to ascertain that defendant no.1 had power to transfer as he was recorded owner in possession of the suit land in the revenue record consistently for the last twenty years. However, conditions no.1 and 2 are not satisfied since defendant no.1 failed to prove the existence/passing of the judgment and decree in question on which he claimed settled rights to ownership over the property in dispute. The first appellate court thus held that no such judgment and decree was in existence and as such he lost title over the entire suit land when he had none to start with. It cannot then be said that defendant no.1 was the ostensible owner of the entire suit land. So far as second ingredient is concerned, the transfer by the ostensible owner should be by the consent express or implied by the real owner but in the present case, there was no such consent express or implied by the other legal heirs of Bhagat Singh. As such, the first appellate court held that defendant no.3 is not entitled to reap the benefit of the provisions of Section 41 of the Act.

9. Learned counsel for the appellant contended that the suit was for declaration and permanent injunction and in a suit for declaration, consequential relief of possession was not claimed, and therefore, the suit is

barred by Section 34 of the Specific Relief Act, 1963. He has relied on Union of India vs. Ibrahim Uddin and another, (2012) 8 SCC 148 while drawing attention to paragraphs 43 to 46 of the report. I fail to see how the ratio of this case applies to a decree obtained by fraud in a title suit. Possession would follow ownership. It is settled proposition of law that fraud avoids all judicial acts ecclesiastical or temporal. (See: S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors. AIR 1994 SC 853). In Lazarus Estate Ltd. Vs. Besalay, 1956 All. E.R. 349), it has been observed that no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.

10. In view of the sufficient legal evidence and clear materials on record justifying a decree in favour of the plaintiffs, it is not possible for this Court to interfere with the findings of fact recorded by the courts below. The judgments and decrees of the courts below do not suffer from any illegality, irregularity or misreading of evidence or cannot be said to be tainted with any error apparent on the face of record so as to require interference by this Court in this second appeal. No question of law, much less a substantial one, arises for consideration in this appeal.

11. For the foregoing reasons, this appeal is held to be denuded of substance and is hereby dismissed.

(RAJIV NARAIN RAINA)
JUDGE

14.9.2017
MFK/vimal

Whether speaking/reasoned *Yes*

Whether Reportable *No*