

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

**RSA-1532-2017 (O&M)
Date of decision:- 10.10.2017**

Harbir and another

...Appellants

Versus

Bhabhuti

....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vikas Singh, Advocate, for the appellants.

RITU BAHRI J. (Oral)

Appellants-defendants have come up in appeal against the judgment and decree dated 01.03.2016, passed by the learned Additional Civil Judge (Sr. Divn.), Palwal, whereby the suit filed by respondent-plaintiff for permanent injunction has been decreed and the judgment and decree dated 31.01.2017, passed by the Additional District Judge, Palwal, by which the appeal against the judgment and decree dated 01.03.2016, has been dismissed.

Plaintiff has filed the suit for permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiff on the suit property. The plaintiff has also become owner of Killa No.12 (8-0) through a Will executed by Shivli son of Sultan, resident of village Karna and mutation No.1196 was also sanctioned. The plaintiff has sold land measuring 1 kanal 12 marlas to Balraj son of Shri Rameshwar Lal, vide sale deed No.1863 dated 23.06.1998. The defendants have got the judgment

and decree dated 20.09.1994 and mutation No.1343 has also been mutated. Thereafter, the plaintiff has filed a civil suit No.843 dated 30.8.1996 and the same was decreed, vide judgment and decree dated 10.04.2003, by the learned Civil Judge (Jr. Divn.), Palwal. The appeal against the said judgment and decree was dismissed on 15.09.2006 and Regular Second Appeal No.346-2007 was dismissed on 20.11.2012. It was held that since the defendants have not filed any SLP before the Hon'ble Supreme Court against the order dated 20.11.2012 and the judgment dated 10.04.2003 had attained finality.

The defendants filed their written statement and alleging that plaintiff had prepared a forged Will dated 08.10.1983 on the basis of which he claimed right in the suit property whereas the suit property already stood transferred in the name of defendants. The defendants filed a civil suit No.653 of 22.10.1992 challenging the Will dated 08.10.1983. However, the suit was compromised between the parties on 20.09.1994 and vide the compromise decree an area measuring 1 kanal 12 marlas was given to the plaintiff, which he sold to Balraj and was subsequently again purchased by the defendants. They admitted the decree dated 10.04.2003 and the subsequent dismissal of the appeal filed by the defendants.

The plaintiff filed the reply to the counter claim and thereafter, from the pleadings of parties, the following issues were framed, vide order dated 16.05.2014: -

- “(1) Whether the plaintiff is entitled for a decree of permanent injunction as prayed? OPP
- (2) Whether suit of plaintiff is not maintainable in its present form? OPD
- (3) Whether plaintiff has no locus standi to file the the present suit? OPD
- (4) Whether plaintiff is estopped by his acts, conduct and acquiescence to

file the present suit? OPD

(5) Whether the plaintiff has got no cause of action to file the present suit? OPD

(6) Whether the plaintiff has not come with clean hands and has suppressed the true and material facts from the Court? OPD

(7) Whether the present suit is barred by the law of limitation? OPD

(8) Whether the suit of the plaintiff is false and frivolous in nature? OPD

(9) Relief.

Counter-Claim: -

(1) Whether the counter claimants/defendants are entitled to the decree for permanent injunction as prayed for ? OPD

(2) Whether the counter claim is legally not maintainable? OPP

(3) Whether the counter claim is barred by the principle of res-judicata? OPP

(4) Whether the counter claim of the defendants is totally, false, frivolous and vexatious in nature? OPP

(5) Relief.”

Both the Courts have returned the concurrent finding of fact that with regard to decree dated 10.04.2003 whereby mutation No.1343 in the judgment dated 20.09.1994 had been set aside and it has been attained finality. The SLP filed by the defendants has been dismissed by the Supreme Court. Both the Courts have further held that the plaintiff had filed a Civil Suit No.843 of 1996 in which he had claimed that he was the owner in possession of the suit property. In Civil Suit No.653 of 1992 in which the defendants had challenged the Will dated 08.10.1983 as fabricated and has also challenged mutation No.1196 by which a compromise had been effected. It was claimed that defendants Harbir etc. were in possession and plaintiff Bhabhuti was trying to interfere in their possession. The plaintiff had taken a plea that he became the owner of the suit property prior to the passing of decree dated 04.08.1987. Hence, the decree was not binding on him. This suit could not be finally decided keeping in view compromise

raised between the parties, which was set aside, vide judgment dated 10.04.2003 in Civil Suit No.843 of 1996. Since the judgment in civil suit has attained finality, the defendants miserably failed to encash the ownership to claim their right of ownership and possession of suit property in the civil suit No.843 of 1996. The pleadings had attained finality with regard to owner in possession of the suit property. Finally, it has been held that the plaintiff is entitled for a relief of filing of the suit, he would be deemed to be in possession of the suit property because the defendants were not able to prove up to the Hon'ble Supreme Court that they were the owners in possession or that the compromise decree was valid.

Learned counsel for the petitioners has not been able to show any evidence led by the defendants that they were in possession of the suit property before the proceedings under Section 145 Cr.P.C. were initiated on 14.03.2014.

Since, the compromise decree dated 20.09.1994 (Ex.D12) has been set aside, vide judgment and decree dated 10.04.2003 and this has been affirmed up to the Hon'ble Supreme Court and has attained finality, therefore, the concurrent finding of facts recorded by both the Courts below does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The present Regular Second Appeal is dismissed.

October 10, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No