

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

Sr. No.121

C.R. No.4648 of 2018

Date of decision: 24.07.2018

Ashok Kumar and another

....Petitioners

versus

Mohinder Pal and and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Sandeep Arora, Advocate
for the petitioners.

* * *

DEEPAK SIBAL, J. (Oral)

Through the present petition challenge is made to the order dated 25.09.2014 (Annexure P-1) passed by the Civil Judge (Junior Division), Jalandhar (for short – 'the Trial Court') allowing the application filed by the respondents under Order 7 Rule 11 CPC and resultantly, rejecting the petitioner's plaint. Order of the Appellate Court dated 18.05.2017 dismissing the petitioner's appeal against the afore-referred order of the Trial Cour has also been assailed.

The facts in brief which need to be noticed for adjudicating upon the present petition are that in the year 1998, respondent No.1 filed a suit against the father of the petitioners seeking therein mandatory injunction to direct him to go out of northern portion of House No.82 (now 476) shown in red colour in the plan attached and measuring 27 ft 4 inches into 16 ft 3 inches (for short – 'the suit property'). Such claim was based on a registered conveyance deed dated 05.09.1977 executed by the

Rehabilitation Department in favour of the predecessor-in-interest of respondent No.1. The petitioners appeared in the suit and contested the same. However, the same was decreed on 24.12.2005. An appeal against the aforesaid decree was dismissed by the Appellate Court on 30.09.2008 and a second appeal preferred before this Court by the petitioners was also dismissed on 12.07.2010. Thus, decree dated 24.12.2005 attained finality. Thereafter, in year 2011, the petitioners filed the present suit against the respondents through which challenge was made by them to the aforesaid conveyance deed dated 05.09.1977. In this suit, the respondents filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the issue sought to be raised in the plaint already stood settled. Such application filed by the respondents was allowed and consequently, the petitioners' plaint was rejected. Against the rejection of their plaint the petitioners preferred an appeal before the Appellate Court, which was dismissed vide order dated 18.05.2017 giving a cause to the petitioners to file the present petition before this Court for the afore-referred reliefs.

Learned counsel for the petitioners has submitted that the petitioners' plaint should not have been rejected as in the instant suit the petitioners had raised the issue with regard to the validity of the registered conveyance deed dated 05.09.1977 which issue had not been framed or decided in the earlier suit between the parties.

The afore submission made by learned counsel for the petitioners has been considered but no merit in the same is found.

A perusal of the aforesaid decree dated 24.12.2005 shows that the same was passed on a suit for mandatory injunction instituted by respondent No.1. Such suit was solely based on the registered conveyance

deed dated 05.09.1977 executed by the Rehabilitation Department in favour of respondent No.1's predecessor-in-interest. The petitioners, who were the defendants therein had appeared before the Trial Court and denied the respondents' claim. The case set up by the petitioners was that respondent No.1 had no claim over the suit property as the same had not been allotted to respondent No.1 or his predecessor-in-interest but to one Budha Ram, who was the real uncle of the parties. It was further the case of the petitioners that the said Budha Ram had given the suit property to the petitioners' grand father Sant Ram when the petitioners' father was a minor and therefore, it was their grand father and now the petitioners who were in possession of the suit property.

Through decree dated 24.12.2005, the Trial Court decreed the respondents' suit after rejecting the case set up by the petitioners. Consequently, the claim of the respondents which was based on the conveyance deed dated 05.09.1977 was accepted. It was further categorically held by the Trial Court that the conveyance deed dated 05.09.1977 on which the respondents had based their entire claim stood fully proved. As observed earlier, the petitioners' appeal against the decree as also their second appeal were dismissed by the Appellate Court and this Court respectively. Learned counsel for the petitioners very fairly submits that though he does not have the details but the petitioners had taken the matter up to the Hon'ble Apex Court but there also their petition met the same fate as their appeal and second appeal. The decree dated 24.05.2005 thus attain finality. That being so, through the instant petition, the petitioners again cannot be allowed to rake up the same issue and that too to challenge a registered conveyance deed dated 05.09.1977 after more than 30

years especially when the petitioner cannot feign ignorance with regard to its existence at least in the year 1998 when the earlier suit was filed.

In view of the above, no error is found in the concurrent findings recorded by the Trial Court as also the Appellate Court.

Dismissed.

(DEEPAK SIBAL)
JUDGE

July 24, 2018
Jyoti 1

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No