

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-9146-2017 (O&M)

Date of decision: 08.01.2018

Smt. Paramjit Kaur and others

..... Petitioners

Versus

Sher Jung

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Raghav Sharma, Advocate for the petitioners.

RAMENDRA JAIN, J. (ORAL)

1. Through this revision under Article 227 of the Constitution of India, the petitioners-defendant have assailed the judgment and decree dated 12.09.2017 of the Ist Appellate Court, Kurukshetra, whereby the judgment and decree of the trial Court dated 25.08.2014 (Annexure P-4), dismissing the suit of respondent-plaintiff-Sher Jung Singh, for want of evidence was set aside and the same was ordered to be deemed to have been dismissed in default.

2. In nutshell, according to the respondent-plaintiff, the petitioners entered into an agreement to sell dated 16.12.2008 with respondent-Sher Jung Singh, for a sale consideration of ₹ 15,15,000/-, qua land measuring 20 kanals 4 marlas, being 3/40 share of total land measuring 269 kanals 0 marlas, situated in village Ram Nagar, Hadbast No. 156, Sub Tehsil Babain, Tehsil Thanesar, District Kurukshetra, according to

advance by the respondent to the petitioners. Sale deed was agreed to be executed on or before 15.06.2009, on payment of balance sale consideration which was extended to 31.12.2009, by mutual consent. On that day, i.e. 31.12.2009, the respondent came to know that there was some stay order of this Court dated 25.02.2008, qua the land in question which the petitioners had not disclosed to him, at the time of entering into the aforesaid agreement to sell, therefore, the date of execution of sale deed was mutually extended, till the expiry of 30 days after vacation of the stay order. This extension of time for execution of sale deed was reduced into writing on the back of the original agreement to sell itself, duly signed by the petitioners. During the pendency of the stay order, the petitioners with their dishonest intention and evil desire tried to alienate the land in question to a third party, therefore, the respondent-plaintiff filed a suit for permanent injunction in the year 2010, restraining the petitioners-defendant from selling or alienating the suit land to any third party or anyone else except him.

3. In the said suit, the respondent-plaintiff, did not lead any evidence, therefore, the trial Court vide judgment and decree Annexure P-4 dismissed his suit for want of evidence.

4. Being aggrieved, the respondent challenged the said judgment and decree before the Ist Appellate Court, on the ground that since he had already filed a suit for specific performance, therefore, there was no necessity to obtain any judgment on his earlier suit for permanent injunction, therefore, he did not lead any evidence, because the same was filed only for limited purpose of injunction, till the date of execution of the sale deed and as soon as the date of the execution of sale deed arrived, he

filed a suit for specific performance. The respondent-plaintiff also took the stand that in fact, after filing of a suit for specific performance, his suit for permanent injunction had rendered infructuous, therefore, the trial Court ought to have dismissed the same under Order 17 Rule 2 read with Section 151 CPC instead of under Order 17 Rule 3 CPC.

5. After hearing both the sides, the Ist Appellate Court, allowed the appeal and ordered that suit of the respondent for permanent injunction shall be treated to have been dismissed in default, instead of its dismissal for want of evidence.

6. Learned counsel for the petitioners *inter alia* contends that the Ist Appellate Court, ought not to have modified the judgment of the trial Court prejudicial to the right of the petitioners, as their valuable right of taking the plea of *res judicata* has been snatched away. Learned Ist Appellate Court, has failed to appreciate that since the respondent through his counsel was very much present on the date of dismissal of suit, therefore, his suit could not have been dismissed in default by the trial Court. The respondent-plaintiff had already obtained 8 effective opportunities including two last one to lead his evidence, but failed to conclude the same, in that eventuality, his suit was rightly dismissed for want of evidence. The respondent-plaintiff ought to have filed a review petition before the trial Court, but he did not exhaust any such remedy before approaching the Ist Appellate Court. In support of his contentions, learned counsel for the petitioners has relied upon judgments in **(i) Arun Kumar Vs. Sham Lal and another, 2015 (2) Civil Court Cases (P&H) 040** and **(ii) Sudhir Kumar and another Vs. Jugraj Singh and others, 2013(3) Civil Court Cases (P&H) 100.**

7. After giving thoughtful consideration to the submissions made by learned counsel for the petitioners, this Court finds the instant revision completely devoid of any merit for the reasons to follow:

8. By this time, it is well settled that a party to the litigation should not be non-suited on technical grounds. Endeavour of the Court should always be to impart justice on merits ignoring the technicalities of law.

9. The instant revision has been filed by the petitioners with their dishonest and *mala fide* intentions just to get success illegally in the suit for specific performance filed by the respondent-plaintiff against them, taking the aid of the doctrine of *res judicata*. The petitioners should put forward their defence honestly before the trial Court in the suit for specific performance against them instead of winning the case on technical plea.

10. The Ist Appellate Court has also dismissed the suit for permanent injunction filed by the respondent may be on different ground, therefore, in every situation, suit of the respondent-plaintiff shall be treated as dismissed for all intents and purposes.

11. The facts and circumstances of the case law relied upon by the learned counsel for the petitioners are not identical to the facts of present case, therefore, no benefit whatsoever of the same can be given to them.

12. In view of the discussion made above, the instant revision being completely devoid of any merit is dismissed.

January 08, 2018

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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No