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

RSA-400-1995 (O&M)

Date of decision : 03.04.2018

Lalji (deceased) through LRs

... Appellant(s)

Versus

Chandgi and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.S. Saneta, Advocate
for the appellants.

Mr. A.K. Singal, Advocate
for respondent Nos.2 to 4.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff No.1 is aggrieved of the concurrent findings of fact, whereby, the suit for pre-emption has been dismissed by the trial Court vide judgment and decree dated 13.12.1991 and affirmed by the lower Appellate Court vide judgment and decree dated 18.05.1994.

It would be apt to give preface of the matter before adverting to the rival contention of learned counsel for the parties.

The plaintiffs instituted the suit on 29.10.1984 claiming possession of agricultural land measuring 110K-2M situated in Village Pasina Kalana by challenging the judgment and decree dated 16.08.1962 along with subsequent orders dated 01.06.1965, 19.03.1963 & 22.04.1965 being null and void as well as with a consequential relief of permanent injunction restraining the defendants from alienating the suit land by way of

sale, mortgage or in any other manner, on the premise that the plaintiffs had filed a pre-emption suit regarding land measuring 66 bighas 19 biswas equal to 126 kanals 12 marlas. The suit was decreed on 04.01.1960 subject to the payment of ₹8,400/-. Defendant Nos.1 to 4 and Mana, predecessor of defendant Nos.5 to 9, filed another civil suit against the plaintiff that the pre-emption suit filed by the plaintiff was *benami*. In that suit, a compromise was arrived at, wherein only 1/8th share was given to Lalji i.e. plaintiff and for the rest of the land, defendant Nos.1 to 4 and Mana, predecessor of defendant Nos.5 to 9 were declared owner. Subsequently, an application dated 22.04 .1965 (Ex.PW2/1) was submitted by the defendants under Order 6 Rule 17 CPC for amendment of the plaint alleging therein area mentioned in the plaint was 51 kanals 17 marlas, whereas it should have been 51 standard kanals 17 standards marlas. Lalji was proceeded *ex parte*. Vide order dated 01.06.1965 (Ex.PJ), the application for amendment was allowed. The plaintiff challenged the said order on the premise that the amendment was allowed on the ground of fraud, for, he actually borrowed a sum of ₹6,000/- from the defendant Nos.1 to 4 and Mana. In lieu of that, agreed to lease the suit land for 20 years. The defendants agreed to restore the land after lapse of 20 years, but the defendant Nos.1 to 4 and Mana played a fraud and misrepresentation upon the plaintiff in bringing him to the Court for purpose of documentation, which resulted into passing of the judgment and decree, under challenge.

Defendant Nos.2 to 12 appeared and contested the suit by raising preliminary objections qua estoppel, law of limitation, barred by principle of *res-judicata* and non-payment of Court fee. On merits, it was submitted that the suit filed by the plaintiff was *benami* on behalf of

defendant Nos.1 to 4 and Mana, predecessor of defendant Nos.5 to 9. The entire expenses of the litigation were borne by the defendants. The filing of the suit and passing of the decree, was not denied.

Replication was filed controverting the averments in the written statement by reiterating the averments in the plaint.

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

1. *Whether the judgment and decree dated 16.08.1962 is null and void and not binding on the rights of the plaintiff as alleged in the plaint? OPP.*
2. *Whether the suit is within time? OPP*
3. *Whether the suit is or is not properly valued for the purposes of court fee and jurisdiction? OPP*
4. *Whether the plaintiff is estopped from his own act and conduct from filing the present suit? OPD*
5. *Whether the suit is or is not maintainable in the present form? OPP*
6. *Whether the defendant Nos.10 to 142 are bona fide purchasers for consideration? OPD*
7. *Whether the suit is barred by the principles of res-judicata? OPD*
8. *Whether the defendants are entitled to special costs u/s 35-A CPC? OPD*
9. *Relief.*

Both the parties led the evidence in support of their respective claims.

The trial Court on the basis of the preponderance of evidence dismissed the suit and the appeal preferred thereof before the lower Appellate Court also met with the same fate.

Mr. J.S. Saneta, learned counsel appearing on behalf of the

appellant-plaintiff No.1 submitted that the judgments and decrees of the both the Courts below are erroneous, for, the decree dated 16.08.1962 was an outcome of fraud and misrepresentation having played upon the plaintiff. The ingredients of fraud or misrepresentation had been proved to the hilt on account of the admission of the defendants as the aforementioned suit financed the pre-emption amount for the plaintiff was co-sharer. The plaintiff failed to prove the amount having been passed on for the purpose of pre-empting the suit land. The alleged compromise and the various orders passed thereon with regard to conversion of the land from acres to standards acres were also result of the fraud, in fact, the plaintiff was the entire owner of the property and not 1/8th share as recorded in the compromise. Both the Courts below have committed illegality and perversity in not appreciating the aforementioned piece of evidence, thus, urges this Court for setting aside the concurrent findings of fact, under challenge as there is a gross illegality and perversity.

Mr. A.K. Singal, learned counsel appeared on behalf of the respondent Nos.2 to 4/defendants submitted that the plaintiff in the aforementioned suit of 1962, appeared and suffered a statement (Ex.D6). A compromise was arrived at between the parties, which had been proved as Ex.D4. The signatures on the statement and agreement had not been proved to be obtained under fraud and misrepresentation or there was any element of impersonation. No explanation had come forth as to how fraud and misrepresentation had been played, therefore, the ingredients were conspicuously wanting and rightly so, the suit was dismissed, thus, urges this Court for dismissal of the present regular second appeal.

I have heard the learned counsel for the parties, appraised the

paper book and of the view that there is no force and merit in the submissions of Mr. Saneta, for, the plaintiff has not been able to prove the ingredients of Order 6 Rule 4 of the Code of Civil Procedure. For the sake of brevity, the provisions of Order 6 Rule 4 CPC reads thus:-

6. Condition precedent.- *Any condition precedent, the performance or occurrence of which is indented to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.*

4. Particulars to be given where necessary.- *In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with date and items if necessary) shall be stated in the pleading.”*

In order to prove the aforementioned ingredients, the plaintiff is required to prove the direct and cogent evidence, much less, corroborative to assert that under what circumstances, he was made to suffer a statement and sign the same. No explanation has come forth in challenging the aforementioned decree passed in 1962, in 1984 when the suit was filed. No sane person would sit idle at home, in case some fraud had been played rather would run from pillar to post to make endeavour for lodging the appropriate criminal proceedings perhaps the plaintiff was afraid that he may have been hauled for making a false statement. The filing of the suit, in my view, was nothing, but an act of aggrandizement and for taking complete somersault. It has been seen by this Court that many persons after

suffering a statement wake up from slumber after lapse of 10-20 years in challenging the decree, by taking a plea that the aforementioned decree was not in the knowledge, probably on advise that there is no limitation for claiming right and title in the property. The argument of Mr. Saneta, does not have any substance, much less, able to cut ice.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees of the Courts below as the same are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination, accordingly, the present regular second appeal is dismissed.

03.04.2018 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No