

In the High Court of Punjab and Haryana at Chandigarh

RSA- 1164 of 2007(O&M)
Date of Decision:12.11.2018

Ishak

---Appellant

vs.

Gajender Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Jai Bhagwan, Advocate
for the appellant

Mr. Harkesh Manuja, Advocate
for the respondents

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for declaration and consequential relief of possession, detailed in head note of the plaint was dismissed by the trial court vide judgment and decree dated 27.9.2004 that came to be affirmed in appeal on 23.2.2007 passed by the Additional District Judge, Faridabad.

In brief, case of the plaintiffs-appellant is that they purchased land measuring 3 bigha 4 biswas bearing Khasra No. 167 and 1/4th share in khasra No. 150 vide sale deed dated 14.6.1960 from Kanak Singh, father of the respondents-defendants. The respondents filed suit for declaration challenging the aforesaid sale deed by claiming them to be reversioners of Kanak Singh. After the sale, consolidation of land holdings was conducted

in village Gopikhera in the year 1962-63. During consolidation proceedings, land bearing killa No. 18/2(4-10), 18/1/2 (0-10) 23 min North (2-15) in lieu of khasra No. 167 (3-4) i.e. 3 bigha 4 biswas and killa No. 27 (1-16) to the extent of 1/8th share i.e. 4 marlas was given to the plaintiffs in lieu of khasra No. 150 (0-7). At the time of consolidation proceedings, land purchased by the plaintiffs and their ancestral land was consolidated together. Defendants No. 1 to 4 filed suit for declaration in the year 1969 titled "Jasbir etc. vs. Bare and others" and in that litigation, relief was granted in favour of respondents-defendants in appeal. The defendants have wrongly included the ancestral holdings of the plaintiffs and purchased land whereas the appellant-plaintiffs remained under bona fide mistake that subject matter of the suit was only purchased land and this mistake continued till final decision of the suit and also till 9.4.1994 when the appellant-plaintiffs came to know from the office of Patwari after obtaining copy of revenue record. Actual possession of the suit land is still with the plaintiffs. The defendants secretly succeeded in getting their names entered in revenue records and the appellant-plaintiffs are entitled to get revenue entries corrected by correction of clerical mistake as well as sale deed dated 14.6.1960.

The respondents-defendants contested the suit and raised preliminary objections inter alia locus standi to file the suit; suit being barred by limitation and principle of res judicata. On merits, they raised averments which are taken note of in brief in para 6 of the judgment passed by the Appellate Court.

The controversy between the parties led to framing of following

issues:-

1. Whether the plaintiffs are owners in possession over the disputed land as alleged? OPP
2. Whether the revenue entries are liable to be corrected in view of the sale deed dated 14.6.1960 in favour of the plaintiffs, as prayed for?OPP
3. Whether the plaintiffs have no locus standi to file the present suit?OPD
4. Whether the plaintiffs are barred from filing the suit from their acts and conduct? OPD
5. Whether the suit is not within limitation?OPD
6. Whether the suit is barred by principles of res judicata?OPD
7. Whether the suit is not maintainable? OPD
8. Relief

The trial court decided issues Nos. 1, 2 and 6 against the appellant and it was held that the suit is barred by principle of res judicata and revenue entries are not liable to be corrected in favour of the plaintiffs. Issues No. 3, 4 and 7 were also answered against the plaintiffs-appellant and in favour of the respondents-defendants and eventually the suit was dismissed. The Appellate Court affirmed findings of the trial court on issues No. 1, 2 and 6 and resultantly, the appeal was dismissed. A relevant extract from paras 12 to 17 of the judgment passed by the Appellate Court, reads as follows:-

12. The only argument of learned counsel for the appellants is this that their ancestral land was clubbed with the land

purchased by the plaintiffs vide sale-deed dated 14.06.1960, copy of which is Ex-PA. Vide aforesaid sale-deed, the plaintiffs purchased 3 bighas 4 biswas land in Khasra No. 167 whereas 1/4th share in Khasra No. 150. When the consolidation of land holdings had taken place, the land allotted to the plaintiffs in lieu of ancestral land was clubbed with the holding of the plaintiff which was allotted to them in lieu of land purchased vide sale-deed Ex. PA. In this manner, when the suit was filed by the defendants against the plaintiffs, plaintiffs litigated that suit under the impression that the same was pertaining to the land purchased by them vide sale-deed Ex. PA but later on when they had gone to Patwari for obtaining copy of the revenue record as they were to take loan for agricultural purposes, they came to know about this mischief of the defendants. Under these circumstances, when the suit of the defendants bearing No. 398 of 1969 decided vide judgment Ex. D-25 on 30.10.1971 and later on in appeal vide judgment Ex. D1 by Ld. Shri Rajinder Garg, the then Addl. District Judge vide order dated 24.03.1973 was not regarding land allotted to the plaintiffs in lieu of their ancestral land, how can that land pass on to the defendants. Their claim was only regarding the land purchased vide sale-deed Ex. PA. In fact, the aforesaid sale-deed was executed prior to the consolidation proceedings. This sale-deed was challenged subsequent to the consolidation proceedings. It was also contended by learned counsel for the appellant that the revenue documents on this file show that the land, which was purchased by the plaintiffs, was separate from the other land held by the plaintiffs. In order to show the mischief on the part of the defendants, counsel for the appellant also referred the statement of DW1 who deposed that he did not know as to if the land of Khasra No. 18/2, 18/1/2 and 23 was allotted in lieu of Khasra No. 167 and further as to if Killa No. 27 was allotted in lieu of Khasra No. 150. Under these circumstances, it was contended that the revenue entries are

liable to be corrected.

13. Though the plaintiffs have taken the plea of amalgamation of his ancestral land with the purchased land, yet the pleadings of the plaintiffs are vague on this point. No where the plaintiffs have given the detail of the land owned by them as their ancestral land. Also, no where it was made clear by the plaintiffs either in the pleadings or in the evidence that the particular land was allotted in lieu of their ancestral land. Under these circumstances, in fact, it is a case of no evidence so as to hold that the ancestral land of the plaintiff has been amalgamated with the land purchased by them vide sale-deed Ex. PA during the course of consolidation of holdings.

14. Apart from the above, right from the very inception, parties have been litigating on the sale-deed dated 14.06.1960 and thereafter on the point of possession, redemption of mortgage etc. All these suits have been filed respecting land under purchase by the plaintiffs from the defendants' father. First of all, Jasbir Singh, Rambir Singh sons of Gajender defendant No.1 instituted a civil suit bearing No. 398 of 1969 seeking declaration to the effect that the sale-deed dated 14.06.1960 is contrary to law and custom and is in-operative and does not bind their reversionary rights. That suit was decided against Jasbir Singh and Rambir Singh vide judgment dated 30.10.1971, copy of which is Ex. D25. Copy of decree-sheet of this judgment is Ex. 26. Against this judgment, Jasbir Singh and Rambir Singh went in appeal. That appeal was decided by the court of Shri Rajinder Garg, the then Ld. ADJ, Gurgaon. Copy of the judgment is Ex. D1. That appeal was accepted and the judgment and decree dated 30.10.1971 was set aside. A decree for declaration was passed in favour of Jasbir Singh and Rambir Singh to the effect that the sale Ex. PA would not affect the reversionary rights. Ex. D2 is copy of decree-sheet of this appeal. Thereafter, civil suit No. 660 of 1981 was filed by defendants against Bare etc. plaintiffs. That

suit was for possession of land measuring 23 Kanals 19 Marlas. In that case, plaintiffs-appellants of this case had taken the plea that although the sale was set aside regarding 3 Bighas and 4 Biswas of the land but the plaintiffs have sought possession of the land over 23 Kanals. They have also included the land belonging to them. Thus, the plea, which the plaintiffs have taken in this case, rather the plea which is the very basis of this suit, has already been taken by them in the aforementioned suit for possession and has also been finally decided in that suit and thereafter in appeal emerging out of the decision of the aforementioned suit. The aforesaid suit filed by defendants Mahender etc. was decided vide judgment dated 10.08.1984, copy of which is Ex. D3. That suit was decided in favour of Mahender etc. with the conclusion that all the land mentioned in Ex. P3 (of that case) was allotted to Bare etc. in lieu of the land purchased by them from Kanak Singh. The earlier judgment, copy of which are now Ex. D25 and Ex. D1, have become final and they operate res judicata and thus, it was held in judgment Ex. D3 that the land detailed in the aforesaid suit was allotted to Bare etc. in lieu of the land purchased by them from Kanak Singh in 1960. Ex. D4 is the copy of decree-sheet of the aforesaid judgment. Bare etc. had gone in appeal against the aforesaid judgment and the same was decided by the then Learned Sh. S. D. Anand, Addl. District Judge (III), Faridabad vide judgment dated 06.04.1985. Maintaining the judgment passed by the trial court, finding no merit in the appeal, the same was dismissed.

15. The matter did not end here. Even Bare etc. plaintiffs filed a civil suit No. 560 of 21.08.1986 which was decided by the court of Sh. A.K. Tyagi, the then Ld. Sub Judge Ist Class, Palwal vide judgment, copy of which is Ex. D14. That suit was for declaration to the effect that the plaintiffs have become owners of land mentioned in para No.1 of the plaint due to lapse of time as right of redemption stands extinguished with

consequential relief of cancellation of mutation No. 124. That suit was decided mainly on the ground of resjudicata. The question of mortgage was in issue in civil suit No. 660 of 06.11.1981, which was decided on 10.08.1984 vide judgment Ex. D30 and its appeal was decided vide judgment dated 06.04.1985, copy of which is Ex. D5. As such, finding matter in issue as the same, which has already been decided vide aforesaid two judgments, the suit was held as barred by the principles of res judicata. Copy of decree-sheet of judgment dated 30.03.1991 is Ex. D15.

16. Thereafter, by filing of civil suit No. 1010 of 1986, the judgment passed in appeal by the court of Sh. S. D. Anand, the then ADJ, Faridabad was challenged. In that case, plea of fraud was taken to the effect that in the year 1981 defendants exercised fraud on the appellate court and got the amendment in decree regarding whole of the land comprised in Khasra No. 167. Suit of the defendants relating to ancestral land of the plaintiff was wrong and not binding on their rights. Thus, in that case as well, the very plea which the plaintiffs have been agitating in this suit, was in question and decided by the court. That case was also decided by the court mainly on issue No. 3 pertaining to that of res judicata. It was decided in that case that the previous litigation decided on 22.09.1984 was between the same parties with regard to the same subject matter and was decided by a competent court, as such, the suit is barred by the principle of res judicata. As such, the suit filed by the plaintiffs Bare etc. was dismissed. Ex. D7 is copy of decree-sheet of that suit. Plaintiffs Bare etc. also filed suit for declaration that they are owners in possession of agricultural land measuring 23 Kanals 19 Marlas and also sought the relief of permanent injunction. In that case, again plaintiffs took the plea regarding amalgamation of his ancestral land with the purchased land. The question of possession vide report Roznamcha dated 24.09.1986, copy of which is Ex. D19, also decided in this

judgment. That suit was also decided against the plaintiffs vide judgment dated 18.03.1991. Copy of this judgment is Ex. D12 and that of decree-sheet is Ex. D13. While that case was pending, defendants Mahender etc. also filed a suit for permanent injunction claiming their ownership and possession over the land measuring 23 Kanals 19 Marlas. That suit was decided in favour of defendants Mahender etc. vide judgment dated 18.03.1991, copy of which is Ex. D10 and that of decree-sheet is Ex. D11.

17. Thus, in view of the above discussed litigation on the file, it is evident that the plaintiffs have been filing case after case regarding the suit land. They have been taking the plea that their ancestral land has been wrongly clubbed in the purchased land and by getting the decree dated 24.03.1973 of the appellate court amended vide Ex. D2, a fraud has been played upon the court and in fact the land owned by the plaintiffs as their ancestral land was never the subject matter of civil suit No. 398 of 1969. This plea of the plaintiffs has been rejected right from the very beginning clearly holding that the land measuring 23 Kanals 19 Marlas is the land which was allotted to the plaintiffs during the consolidation proceedings, in lieu of land purchased by them vide sale-deed dated 14.06.1960, copy of which is Ex. PA. In fact, there is not even an iota of evidence on the file to show even in lieu of the oral as well as documentary evidence led by the plaintiffs in this case that the ancestral land of the plaintiffs has been wrongly included in the land purchased by them, during the course of consolidation of holdings. Even plaintiffs have filed a civil suit bearing No. 67 of 14.01.1983 for cancellation of amended decree-sheet dated 22.05.1981 in case Jasbir Singh Vs. Bare etc. taking the same pleas as have been taken by the plaintiffs in this case. That suit of the plaintiffs was also dismissed by giving a clear cut finding that the land measuring 23 Kanals 19 Marlas was allotted in lieu of 3 Bighas 4 Biswas land. There is

no appeal against this judgment and it has become final till date.”

Counsel for the appellant would contend that as in the instant suit the appellant has sought correction of revenue entries which were incorrectly recorded by the revenue authorities, findings recorded in the previous litigation to which reference has been made by the Appellate Court cannot operate as res judicata in the present case. He has further submitted that appellant filed an application for additional evidence to substantiate his plea with regard to part of land being ancestral and he has placed on record large number of documents sought to be produced by way of additional evidence.

Counsel representing the respondents-defendants has supported concurrent findings of fact as well as on the question of res judicata with the submission that the plaintiffs involved the defendants in protracted litigation in which the same question was directly and substantially raised repeatedly and decided against the plaintiffs-appellant that finds reference in detail in the judgment passed by the Appellate Court. It is further argued that merely because in the present suit the plaintiffs have also sought correction of revenue entries by raising the same averments which were subject matter of the earlier litigation, the present suit is nothing but abuse and misuse of process of law and has rightly been dismissed by the courts.

Another submission made by counsel is that the present appeal does not raise a question of law that needs determination in regular second appeal.

I have heard counsel for the parties, perused the paper book and records.

Counsel for the appellant has not made any submission in order to challenge correctness of facts qua earlier litigation between the parties, noticed by the Appellate Court in detail, wherein the plaintiffs raised a similar issue with regard to land purchased through sale deed and ancestral land being clubbed together at the time of consolidation in the village. He has also not disputed that previous litigation between the parties by filing successive suits was finally decided between the parties and judgments passed therein have attained finality. The mere fact that in the present suit, the plaintiffs have also prayed for correction of revenue records which plea was available to them to be raised in the previous litigation will not enable them to file another suit by escaping bar created by the principle of res judicata envisaged in Section 11 of the Code of Civil Procedure, 1908 (in short “the Code”) enacted with a clear intent to debar the court to try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. Explanation IV to Section 11 of the Code further says that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. When findings recorded by the Appellate Court are examined in the light of provisions of

Section 11 along with explanation IV thereto, it is difficult to accept contention of the appellant that findings of the Courts that the instant suit is barred by principle of res judicata suffer from an error much less perversity warranting intervention. No sooner the suit is barred by principle of res judicata, this Court need not to dilate on merits of the case at the cost of making the judgment lengthy.

The appellant has filed an application for additional evidence to produce on record certain revenue documents. Counsel for the appellant has not made any submissions with regard to merits of the application much less that the application falls within the purview and ambit of clauses (a) and (aa) of Rule 27 of Order 41 of the Code. This apart, in view of discussion made hereinbefore, findings of the courts on the question of res judicata are liable to be affirmed. Since this court has not adverted to merits of the case on account of having affirmed findings of the courts on the principle of res judicata, the application for additional document is inconsequential. As such, the application filed by the appellant for additional evidence stands disposed of. Any other miscellaneous application filed by the parties shall be deemed to be disposed of having not been pressed.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

12.11.2018
paramjit

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