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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2975-2016 (O&M)
Date of decision : 08.03.2018

Salinder Singh @ Chhinder Singh

... Appellant(s)

Versus

Natha Singh and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Chauhan, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-7967-C-2016

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 68 days in refiling the appeal is condoned.

RSA-2975-2016

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit for declaration asserting the right to the extent of ½ share in the property measuring 153 kanals 1 marlas, as described in the head-note of the plaint, situated in Village Hukkran and Rajwan, District Hoshiarpur, by challenging the ownership deed dated 11.08.2006 to be illegal, null and void and mutation No.1203, has been dismissed by the trial Court vide judgment and decree dated 15.09.2011 and upheld by the lower Appellate Court vide judgment and decree dated 14.09.2015.

The appellant-plaintiff instituted the suit against the brothers

seeking aforementioned relief, on the premise that father of the plaintiff and defendant was owner of the land measuring 153 kanals 1 marals and by the dint of hard labour of the plaintiff, a chunk of property was purchased in the name of defendant No.1. With a understanding that after the death of their father, the plaintiff and defendant No.1 would partition the property in Village Hukkran and Rajwan. An agreement regarding settlement deed dated 07.08.2006 was fraudulently scribed by the defendant No.1, taking the advantage of illiteracy of the plaintiff. After execution of the aforementioned deed, the appellant-plaintiff was taken to the Tehsil Complex with his father for execution of a document.

The aforementioned suit was contested by the defendants on the premise that both the documents, under challenge, have been signed by the plaintiff to be genuine and valid documents.

The trial Court on the basis of the pleadings of the parties framed the following issues:-

1. *Whether the ownership deed dated 11.08.2006 is illegal, sham transaction and is result of fraud committed by defendant No.1 upon the plaintiff? OPP.*
2. *Whether the plaintiff is entitled to declaration as prayed for? OPP*
3. *Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
4. *Whether suit of the plaintiff is not maintainable in its present form? OPD*
5. *Whether plaintiff has no locus standi to file the present suit? OPD*
6. *Whether plaintiff has not come to the court with clean hands, if so its effect? OPD*
7. *Whether the plaintiff has no cause of action to file the*

present suit? OPD

8. *Whether the agreement dated 7.8.2006 is illegal, null and void, forged and fabricated document and is result of misrepresentation? OPD*

9. *Relief.”*

The plaintiff in support of his case, examined himself as PW1 and in rebuttal, Malkiat Singh, the defendant.

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

Mr. R.K. Chauhan, learned counsel appearing on behalf of the appellant-plaintiff submits that during the pendency of the appeal before the lower Appellate Court, an application under Order 6 Rule 17 CPC seeking amendment of the plaint for incorporation of the relief that the appellant-plaintiff had a right in the property by birth as the nature and character of some of the property/land was ancestral, but the same has erroneously been dismissed. Even otherwise, the land was not equally distributed as per the settlement and only the land measuring 22 kanals (an odd marla) was given to the plaintiff viz-a-viz the other defendants, given a major chunk. Since Mehar Singh died intestate, the property was liable to be distributed amongst the brothers in equals share. All these factors have not been taken into consideration, thus, there is an abdication, much less, illegality and perversity.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Chauhan, for, the appellant-plaintiff miserably failed to lead evidence as per the provisions of Section 101 and 102 of the Indian

Evidence Act. It was incumbent upon the plaintiff to prove on record the documents to establish pleaded case and also prove the ingredients of fraud and misrepresentation, much less, coercion as contained in Order 6 Rule 4 of the Code of Civil Procedures. The application seeking amendment of the plaint was also an afterthought as the same was not accompanied by an application for additional evidence for establishing *prima facie* that the nature and character of the property was ancestral. Where a person has omitted to lay a claim and moved an application only seeking amendment without application for additional evidence, that would not render any help because evidence would be treated being beyond the pleadings. All these factors have been noticed by the Courts below.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees rendered by 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 and accordingly, the present regular second appeal is dismissed.

08.03.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasonedYes/ No

✓

Whether ReportableYes/ No