

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-4414-2016 (O&M)

Date of Decision: 17.5.2018

Suraj Bhan

....Appellant.

Versus

Ishwar Dutt and another

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

PRESENT: Mr. Naveen Singh Panwar, Advocate for the appellant.

AJAY KUMAR MITTAL, ACJ.

1. Delay of 22 days in refiling the appeal is condoned.
2. Having lost before both the Courts below, the appellant-plaintiff has approached this Court by way of instant Regular Second Appeal challenging the judgment and decree dated 14.7.2015 passed by the Additional District Judge, Sonapat, affirming that of the Civil Judge (Junior Division), Sonapat, dated 10.1.2013 whereby the suit of the plaintiff for declaration with consequential relief of permanent injunction, was dismissed.
2. Sans unessentials, the facts of the case as narrated therein are that the plaintiff is a permanent resident of village Chatia Aulia, District Sonapat. It was pleaded therein that the sale deed dated 22.7.1999 executed by defendant No.2 in favour of defendant No.1 was illegal, null and void.

Defendant No.2 was owner in possession of *shamlat* land including the plot measuring 450 square yards. Defendant No.1 in collusion with defendant No.2 got passed a resolution dated 27.4.1995. Further, the Director of Panchayat, Haryana vide order dated 29.9.1997 directed defendant No.1 to deposit amount of the plot in question at the rate of ₹ 80/- per square yard. The said order was challenged before this Court by Shri Bir Singh and Shri Dharambir and this Court vide order dated 29.5.2001 directed defendant No.1 to make the payment of the said plot @ ₹ 200/- per square yard. Accordingly, the plaintiff filed a suit for declaration with consequential relief of permanent injunction. Upon notice, the defendants filed separate written statements raising various preliminary objections. It was pleaded by defendant No.1 that he was in actual physical possession of the suit land since the time of his forefathers and defendant No.2 passed a resolution in his favour considering his long possession over the suit land. As per the directions of this Court in Bir Singh's case, defendant No.1 had deposited the amount in the account of defendant No.2. Further, the mutation of the plot in question had already been sanctioned in favour of defendant No.1. Defendant No.2 pleaded in its written statement that resolution was passed in favour of defendant No.1 considering his long possession over the suit land and that defendant No.1 was using the said land as owner in possession. The other averments made in the plaint were denied and a prayer for dismissal of the suit was made.

3. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the sale deed dated 22.7.1999 in respect of suit property is wrong and illegal? OPP

2. Whether the plaintiff is entitled to the injunction, as prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
5. Whether the present court has no jurisdiction to try the present? OPD
6. Whether the suit of the plaintiff has not been properly valued for the purposes of jurisdiction and court fees? OPD
7. Whether the suit of the plaintiff is barred by principles of resjudicata? OPD
8. Whether the suit is false and frivolous? OPD
9. Relief.

Additional Issue:

Whether the resolution dated 27.4.1995 passed by defendant No.2 is wrong, illegal, null and void? OPD.

4. Both the parties led their respective evidence. The trial Court on appreciation of the oral as well as documentary evidence led by the parties, dismissed the suit of the plaintiff vide judgment and decree dated 10.1.2013 holding that defendant No.1 was using the suit land and the sale deed, Ex.P1, of the plot in question had already been executed on 26.7.1999 by defendant No.2 in favour of respondent-defendant No.1. Accordingly, the trial Court vide judgment and decree dated 10.1.2013 dismissed the suit

of the plaintiff. Against the said judgment and decree dated 10.1.2013, the plaintiff filed an appeal before the lower appellate court who finding no illegality and infirmity in the findings of the trial Court, dismissed the same vide judgment and decree dated 14.7.2015. Hence, the present appeal claiming the following substantial questions of law:-

- “(i) Whether sale deed executed by an unauthorized person on behalf of Panchayat is void ab initio or not?
- (ii) Whether sale deed executed in violation of the relevant policy of the State of Haryana is void ab initio or not?
- (iii) Whether availing of remedy under Articles 226 and 227 of the Constitution of India can be treated res judicata on a civil suit?
- (iv) Whether fraud can be a ground to declare a sale deed as null and void?”

5. I have heard learned counsel for the appellant and have gone through the judgments and decrees with his assistance.

6. Learned counsel for the appellant has made an attempt to persuade this Court to re-appreciate the evidence led by the parties before the trial Court to differ with the opinion of the courts below which is not permissible in view of the provisions of Section 100 of the Code of Civil Procedure. The Courts below on appreciation of oral as well as documentary evidence had recorded a concurrent finding of fact that the order, Ex.D1 passed by this Court in CWP-9775-1999 would operate as *res judicata* and the plaintiff cannot re-agitate and challenge the resolutions and

the sale deed by way of civil suit. Further, a finding of fact was recorded by the courts below that the suit of the plaintiff was time barred as the sale deed was executed on 26.7.1999 whereas the suit was filed on 30.1.2009 after the expiry of more than nine years. No misreading of evidence on record by the courts below had been shown by the learned counsel warranting interference by this Court in the regular second appeal.

7. No question of law, much less a substantial question of law arises in this appeal for consideration of this Court.

8. In view of the above, there is no merit in this appeal and the same is hereby dismissed. No costs.

9. Since the appeal was barred by time, CM-11538-C-2016 was filed under Section 5 of the Limitation Act, 1963, for condonation of 13 days' delay in filing the appeal. Since, the appeal has been dismissed on merits, therefore, no further orders are required to be passed in the present application and the same is disposed of as such.

May 17, 2018
gbs

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

Speaking/Reasoned

Yes

Whether Reportable

Yes