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In the High Court of Punjab and Haryana at Chandigarh

RSA-4872 of 2016(O&M)
Date of Decision:22.5.2018

Smt. Kanwaljit Kaur and others

---Appellants

vs.

Jaswinder Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

***

Present: Mr. Dinesh Ghai, Advocate
for the appellants

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Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by Jaswinder Kaur respondent/plaintiff seeking declaration to the effect that mutation No. 13049 entered and sanctioned in favour of defendants No. 4 and 5 namely Smt. Raj Deep Kaur and Smt. Varinder Kaur alleged daughters of late Smt. Harcharan Kaur wife of late Sardar Partap Singh is wrong, illegal and not binding upon rights of the plaintiff and defendant Nos. 1 and 2 may be directed to enter and attest fresh mutation of inheritance as per revenue record and share of the plaintiff, defendants No. 3 and 6 to 9 restraining defendant No. 3 from alienating the suit land more than her share, was decreed by the trial court vide judgment and decree dated 7.5.2012 and appeal preferred by defendants No. 3 to 5 namely Smt. Kanwaljit Kaur, Smt.

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Raj Deep Kaur and Smt. Varinder Kaur was dismissed by the Additional District Judge, Karnal on 17.10.2015.

Counsel for the appellants would argue that the judgments and decrees passed by the courts are not based upon correct appreciation of factual as well as legal controversy involved in the case and suffer from perversity, thus, liable to be set aside. It is argued that once the trial court permitted the contesting defendants to adduce evidence and they examined DW1 to DW4 namely Kanwaljit Kaur, defendant No. 3 DW1, Raj Deep Kaur, defendant No. 4 DW2, Varinder Kaur, defendant No. 5 DW3 and Kulbir Singh DW4, the courts have committed grave error by refusing to take into consideration their evidence while deciding the suit on merits.

I have heard counsel for the appellants, perused the paper book particularly the judgments impugned.

The trial court in para 9 of the judgment has noticed that defendants No. 3 to 5 (appellants herein) were proceeded against ex parte on 6.6.2008. Later, an application was filed by the defendants on 20.4.2009 for setting aside ex parte order. The application was dismissed in default on 5.4.2010. Another application was filed on 1.4.2011 for setting aside order dated 5.4.2010 and the same was dismissed on 20.8.2011. As a result, order dated 6.6.2008, vide which defendants No. 3 to 5 were proceeded against ex parte remained intact. No written statement was filed by defendants No. 3 to 5. Defendant No. 3 joined the proceedings at the time of recording evidence of plaintiff and cross examination of the witnesses. Defendants also adduced evidence as noticed hereinbefore. In absence of any plea in defence raised by defendants No. 3 to 5, they neither could examine the

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witnesses to counter case of the plaintiffs qua merits nor were entitled to adduce their own evidence in this regard. At best, they can challenge veracity of witnesses examined by the respondents/plaintiffs on some other grounds such like their previous conduct noticed in some legal proceedings etc. No sooner had the appellants come to know about ex parte proceedings being initiated against them than they could contest the proceedings only after getting the ex parte order dated 6.6.2008 set aside. The conduct of the appellants in getting their applications dismissed in default not only once but twice speaks volumes that either they were not interested to contest the proceedings or they were without any plea to defend the case of the respondent/plaintiff that Smt. Raj Deep Kaur and Smt. Varinder Kaur are not the daughters of late Smt. Harcharan Kaur and S. Partap Singh, therefore, being not entitled to inherit to estate of Smt. Harcharan Kaur. In this view of the matter, I do not find an error much less illegality or perversity in the judgments passed by the Courts warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay of 256 days in re-fling the appeal is of academic relevance only.

Before parting with this order, it is pertinent to mention that the appellants filed CM No. 2373-C of 2018 for adducing additional evidence seeking permission to place on record documents Annexure P4 to P7. During course of hearing, counsel for the appellants has not made any submissions as to how the present application falls within the purview of clause (a) and (aa) of Rule 27 of Order 41 of the Code or how the

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documents sought to be produced by way of additional evidence would advance cause of the appellants much less being relevant and material for rendering substantial justice to the parties. That being so, application for additional evidence is liable to be dismissed and ordered accordingly. Any other application filed by the appellants shall be deemed to be disposed of with the disposal of appeal as counsel for the applicants-appellants has not made any submissions in this regard.

(Rekha Mittal)
Judge

22.5.2018
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Whether speaking/reasoned: Yes
Whether reportable : Yes/No