

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

**R.S.A No.5674 of 2016(O&M)
Date of decision :21.08.2018**

Shamsher Singh

..... Appellant

Versus

Harish Kumar and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Sandeep Jasuja, Advocate
for the applicant-appellant.

LISA GILL,J

Present appeal has been filed against the judgement and decree dated 04.02.2013 passed by the learned Civil Judge (Sr. Division), Fazilka, whereby the suit filed by the plaintiff-appellant has been dismissed as well as judgement and decree dated 26.11.2015, passed by the learned Additional District Judge, Fazilka, whereby their appeal has also been dismissed.

Brief facts necessary for the adjudication of the case are that the appellant-plaintiff filed a suit for declaration to the effect that sale deeds dated 12.04.2005, 27.04.2006, 22.05.2006 and 25.10.2007 are void *ab initio*, null and void, liable to be cancelled, set aside being invalid and in violation of order dated 30.11.1999 passed by this Court in RSA no. 1839 of 1999. It was further prayed that the defendants be restrained from

alienating or transferring the land in question. It was pleaded by the appellant-plaintiff, that three of his brothers and the appellant were owners in possession of the land as described in the plaint. Makhan Singh son of Dilawar Singh son of Krishan Singh was recorded as owner of 6 Kanal 14 Marlas of land in jamabandi for the year 2003-04. It was averred that Ganga Singh, father of the present appellant was earlier married to one Kaushalya Bai. A daughter namely Durgo Bai was born out of the wedlock. Ganga Singh, after the death of Kaushalya Bai, married Khusian Bai, mother of the present appellant. Four sons and six daughters were born out of the second marriage of Ganga Singh. Ganga Singh in a family settlement distributed his property among his four sons i.e. the present appellant and his three brothers namely Balbir Singh, Jangir Singh and Gurdev Singh. Decree dated 30.07.1988 was passed in this respect, wherein Ganga Singh appeared and admitted the claim of his four sons. The same was challenged by Durgo Bai. Her suit was dismissed. However, appeal filed by her before the learned First Appellate Court was allowed thereby decreeing her suit. RSA No. 1839 of 1999 was filed by the present appellant along with his three brothers, which was admitted on 30.11.1999. Parties were directed to maintain *status quo* regarding the suit property. It was averred that defendants- Harish Kumar, Satish Kumar sons of Ved Parkash, Bhajan Lal, Pritam Kaur, Makhan Ram and Kala Ram, despite being aware of the order passed by this Court in RSA No. 1838 of 1999 got the sale deeds in question executed in their favour. Therefore, all the said sale deeds deserve to be set aside.

The suit was resisted by all the defendants. Written statements was filed by defendants no.1 to 3, 5 and 6. Separate written statement was filed by defendant no.4.

From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether plaintiff is entitled to declaration as prayed for?OPP
2. Whether plaintiff is entitled to permanent injunction as prayed for?OPP
3. Whether suit of the plaintiff is not maintainable in the present form?OPD
4. `Whether the plaintiff has no right to file the present suit?OPD
5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD
6. Relief.

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

Learned trial Court after considering the evidence on record dismissed the suit filed by the appellant-plaintiff.

Appeal preferred by the plaintiff-appellant was also dismissed by the learned Additional District Judge, Fazilka, vide impugned judgement and decree dated 26.11.2015.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant argues that both the learned Courts below have erred in dismissing the suit filed by the appellant-plaintiff. Therefore, it is prayed that both the impugned judgements and decrees be set aside and the present appeal be allowed.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

It is not in dispute that there was long drawn out litigation in respect to the suit property. Appellant along with his three brothers, Makhan Singh son of Dilawar Singh son of Kishan Singh were recorded as owners of the suit property. Suit for declaration, permanent injunction and joint possession was decided by the learned Civil Judge (Jr. Division), Fazilka on 22.02.1996, while dismissing the suit filed by Durgo Bai. Her appeal was allowed and was the subject matter of challenge by the appellant and his three brothers in RSA No. 1839 of 1999. Appellant-plaintiff pleaded that the sale deeds in question were executed in violation of orders dated 04.06.1999/ 30.11.1999 passed in the abovesaid RSA wherein *status quo* was directed to be maintained. All the defendants, it was stated were aware of the order in question. Therefore, there was no question of any of the defendants being *bona fide* purchasers of the suit land. Evidence of PW-1-Shamsher Singh (Appellant no.3 in RSA No. 1839 of 1999), is extremely relevant. PW-1-Shamsher Singh, in his cross-examination admitted that the said restraint order was not communicated to the concerned Revenue Authorities. He himself admitted that he too had alienated some part of the disputed property. Learned Courts below have rightly held that the said sale deeds are not ipso facto rendered a nullity in view of the pleadings of the appellant, which in any case were not substantiated by the evidence on record.

It is relevant to note at this stage that RSA no. 1839 of 1999 has since been allowed by this Court on 07.02.2018. I have perused the said decision dated 07.02.2018 furnished in Court today, during the

course of hearing. The present appellant along with his three brothers had filed RSA No. 1839 of 1999 challenging the right of Durgo Bai to the said land. Their appeal stands allowed. Therefore, nothing survives in the present appeal, which warrants any interference by this Court

No other argument has been raised.

There is no question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

There is a delay of ninety three (93) days in re-filing of this appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in re-filing of this appeal has been rendered academic. Application is accordingly disposed of.

Accordingly, present appeal is dismissed with no order as to cost.

21.08.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No