

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**RSA No.5872 of 2016 (O&M)
Date of Decision.28.05.2018**

Sunil Kumar and another

.....Appellants

Vs

Sheela Devi and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Kamlesh Khatri, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs had been unsuccessful before the Courts below whereby the suit claiming declaration to the effect that plaintiffs are owners in possession to the extent of 1/4th share in the agricultural land measuring 26 kanals 17 marlas (hereinafter called as the “suit land”) on the basis of judgment and decree dated 24.10.1998 rendered in civil suit bearing No.967 titled as “Sunil Kumar etc. Vs. Anand Singh etc.” by challenging the mutation bearing No.2501 dated 23.11.2005 to be illegal, null and void and for permanent injunction against defendant No.1 and 2 from taking illegal and forcible possession and as well as creating third party rights with further relief of mandatory injunction directing defendant No.8 and 9 to restore the mutation No.2233 in favour of plaintiff by cancellation of mutation No.2501, has been dismissed and upheld by the lower Appellate Court.

The suit aforementioned was filed on the premise that in view of the aforementioned judgment and decree, plaintiffs became absolute owners in possession of the suit land, for, at that time the

suit was pursued by their father Jagbir son of Surat Singh, as the plaintiffs were minor. Defendant No.4 and 5 namely Jai Chand and Anand Singh were declared owners to the extent of half share whereas defendant No.6, Jagbir was declared owner of another half share. On account of aforementioned decree, mutation bearing No.2233 was sanctioned in favour of the plaintiffs. The land as detailed in para No.1 of the plaint was acquired by the Government of Haryana and thereafter, the plaintiffs were left with 1/4th share in the remaining land as per the description given in para No.3 of the plaint. After the judgment and decree, the plaintiffs were owners in possession of the suit land to the extent of their share but were flabbergasted to receive summon in civil suit bearing No.107 to 2006 filed by defendant No.7, Brahmo Devi regarding civil suit No.611 for declaration and joint possession whereby Brahmo Devi had been declared as owner in possession of the suit land to the extent of 1/5th share. The judgment and decree dated 22.03.1997 was obtained by Brahmo Devi at the back of the plaintiffs. Since the plaintiffs were not impleaded as party in the aforementioned suit, the judgment and decree was not sustainable. Even the mutation had illegally and erroneously been incorporated.

Upon notice, defendant No.2 filed written statement by taking preliminary objections qua maintainability of the suit and stated that the plaintiff instituted the suit on the basis of judgment and decree rendered in Civil Suit bearing No.611 of 12.8.1989 titled as “Shri Anand Singh and others Vs. Shri Surat Singh and others”, which was a result of collusion between Jagbir Singh, father of the

plaintiffs and Ishwar Singh, Jai Chand, Anand Singh and Brahmo Devi. The decree dated 24.10.1998 obtained by plaintiffs was on account of misrepresentation and fraud, for, the plaintiffs had concealed the factum of pendency of the civil suit challenging the sale deed dated 17.2.2006 wherein the injunction sought had been declined.

The aforementioned suit was also contested by defendant No.3 to 6 by filing separate written statement stating that the suit property was ancestral as inherited by Surat Singh from his forefathers.

Since the parties were at variance the trial Court framed as many as seven issues including the issue of relief. Both the parties in support of pleadings led their respective evidence.

On the preponderance of the evidence, the trial Court dismissed the suit which has been affirmed by the lower Appellate Court.

Ms. Kamlesh Khatri, learned counsel appearing on behalf of the appellants submitted that the appellants could not file the appeal within time. There is a delay of 118 days in filing the same, which has duly been explained in the application. Certain pages of the decree sheet of the lower Appellate Court were missing and in this process, delay aforementioned was occurred.

On merit, it was argued that both the Courts below have abdicated in ignoring the judgment and decree dated 24.10.1998, which was still in existence and not declared illegal and void. The revenue record also reflected possession of the appellants-plaintiffs.

In the suit filed by Sheela Devi for possession, ownership was claimed on the basis of the judgment and decree dated 24.02.1989 but the lower Appellate Court found that Sheela Devi was not in possession of the property but was residing with her second husband. Sheela Devi played a fraud in obtaining the judgment and decree dated 25.02.2003 and on the basis of the same got the mutation No.2501 sanctioned in her favour.

I have heard learned counsel for the appellants-plaintiffs, appraised the paper book and of the view that there is no force and merit in the submissions of Ms. Kamlesh Khatri. It is conceded position on record that the plaintiffs had laid challenge in the previous suit on the identical ground. The said suit was accompanied by an application under Order 39 Rule 1 and 2 CPC, which was refused. In order to circumvent the aforementioned order, instituted the present suit. It was a clear cut case of forum shopping. Surat Singh was ex parte in the civil suit titled as “Sheela Devi Vs. Ishwar Singh” decided on 17.10.2002. In the judgment dated 25.09.2003 rendered by the lower Appellate Court, it was held that in the event of acquisition of any portion of the suit property, the compensation payable on the land would be paid to Sheela Devi. Against the aforementioned judgment and decree, regular second appeal bearing No.5940 of 2003 was filed by four sons of Surant Singh which was dismissed vide order dated 13.05.2005. Even SLP bearing No.17840 of 2005 preferred in the Hon'ble Supreme Court was dismissed *in limine* on 30.01.2006. When civil suit bearing No.611 of 1989 was pending adjudication, four sons of Surat Singh should have brought

to the notice of the concerned Court that parallel litigation was going on between defendant No.1 and the sons of Surat Singh, in essence, there was concealment of true facts before the Civil court.

All these factors have been examined by the Courts below in arriving at concurrent finding of fact and law which cannot be interfered unless and until there is gross illegality and perversity. The argument of Ms. Khatri has not been able to bring the case within the realm of illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed on merit as well as on limitation.

(AMIT RAWAL)
JUDGE

May 28, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No