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

RSA No.5327 of 2015 (O&M)
Date of Decision.20.11.2018

M/s Haryana Foundary Works and another ...Appellants

Vs

Chander Spall and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aditya Jain, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.12685-C of 2015

For the reasons stated in the application, delay of 25 days in re-filing of the appeal is condoned.

Application is allowed.

RSA No.5327 of 2015

The appellants-plaintiffs have not been successful in seeking declaration with consequential relief of permanent injunction against the defendants. It was alleged that the plaintiffs were engaged in the business of foundry of land measuring 13 biswas, consisting of ten rooms, tin shed, boundary wall etc. As per the averments, the partnership firm was dissolved and re-constituted many time in 1971. The last sale of the firm was on 01.03.2004.

Defendants No.1 to 4 in collusion with defendants No.5 to 9 sold the property of plaintiff No.1 measuring 20 bighas 15 biswas to the extent of 13/415 share i.e. 13 biswas to defendants No.10 and 11 vide registered sale deed dated 20.02.2006, which should not have been done and therefore, the suit aforementioned was filed.

Defendants No.3 and 4 opposed the suit and stated that the land of the factory was purchased by Desh Raj in the year 1969, father of defendant No.3, thus, denied ownership of the firm. The sales tax number was applied in the year 1971 and also applied for the electric connection. The father of plaintiff No.2 was working as accountant in the firm and after demise of Desh Raj, father of defendant No.1 met with serious accident and therefore, father of plaintiff No.2 put the proposal to run the firm on no profit no loss basis, thus, infrastructure including the raw material was in the custody of the defendants, therefore, the declaration could not have been granted.

On preponderance of the evidence, the trial Court dismissed the suit. In appeal, the lower Appellate Court also did not find favour with the appellants-plaintiffs.

Mr. Aditya Jain, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the Courts below have committed illegality and perversity in not appreciating the evidence while dismissing the suit in question. As per the evidence, the land in question was property of the firm and after the death of Desh Raj, even if it was allegedly mutated in the name of his legal heirs, the property of the firm could not have been sold by defendants No.1 to 4 in favour of defendants No.10 and 11. Both the Courts below committed error in holding that legal heirs of Desh Raj had become owner because mutation was sanctioned in their favour but mutation does not confer title.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jain, for, the documentary evidence placed on record showed that it was self-acquired property of Desh Raj and on his demise, was inherited and mutated in the name of legal heirs. Plaintiffs have failed to discharge onus regarding jointness of the property or proved that assets and funds of the partnership firm were jointly purchased, thus, had share. In the absence of such evidence, the declaration could not been granted and rightly so rejected.

As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 20, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No