

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

RSA No.499 of 2017

Vinod Kumar (deceased) through LRs

....Appellants

Versus

Radha Devi

....Respondent

Date of Order: 13th.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Sahu, Advocate for the appellants.

AMIT RAWAL, J (ORAL)

Plaintiff-appellant is in regular second against the concurrent findings recorded by both the courts below whereby their suit has been dismissed vide judgment and decree dated 25.9.2012 passed by learned Addl. Civil Judge (Sr. Division), Sirsa and the appeal filed against the same vide judgment and decree dated 23.9.2016 passed by learned Addl. Sessions Judge, Sirsa met with the same fate.

Plaintiff-appellant filed the suit for declaration claiming to be owner in possession of the land measuring 112 kanal 2 marlas being half share of total land measuring 224 kanal 4 marlas fully detailed and described in the head note of the plaint situated in village Madho Singhana, Tehsil and District Sirsa by challenging the judgment and decree dated 19.8.2006 passed in Civil suit No.544 of 1991 titled as Smt Radha Devi Vs. Suraj Bhan and others to be null and void and that the Will dated 12.3.1962 allegedly executed by Thandu Ram son of Magna Ram in favour of the defendant to be forged and fabricated. It was stated that he had been

declared as owner in possession of the land measuring 103 kanal 15 marlas being 1-4th share of land measuring 415 kanal 2 marlas situated at village Madhosinghana, Tehsil and District Sirsa fully described in para 2 of the plaint vide judgment and decree dated 13.9.1990 passed in civil suit No.1741 of 1990 titled as Vinod Kumar Vs. Ranjit Singh and mutation No.2515 was sanctioned on 16.10.1990 in his favour. Said mutation was also reflected in the jamabandi for the year 1986-87 till 1990. Plaintiff received the aforesaid land measuring 103 kanal 15 marlas in mutual settlement as per mutation No.3088. Thereafter, the plaintiff received a notice in November, 2006 from the court of the then learned Addl. District Judge, Sirsa in Civil Appeal No.228 of 2006 titled Suraj Bhan and others Vs. Smt Radha Devi and another and on inquiry he came to know that Radha Devi widow of Balbir Singh had filed a suit No.544 of 1991 in the civil court against Suraj Bhan, Om Parkash, Rajinder sons of Ramji Lal son of Thandu Ram, Ranjit and Atma Ram sons of Ramji Lal for declaration and possession of 418 kanal 14 marlas which included 415 kanal 2 marlas on the basis of a will dated 12.3.1962 allegedly executed in favour of Radha Devi by Thandu Ram and consequently the judgment and decree dated 19.8.2006 was passed. Plaintiff was impleaded as proforma respondent being legal representatives of Ranjit Singh, who died during the pendency of the Civil Suit No.544 of 1991, however the judgment was passed without giving any opportunity of hearing to the plaintiff.

Upon notice, defendant filed written statement and raised objections regarding maintainability, limitation, res-judicata etc. On merits, it was pleaded that the possession of the suit land on the basis of incorrect sanctioned mutation, the plaintiff could not claim himself to be owner in

possession of the land as the judgment and decree dated 19.2.1980 was regarding the land measuring 262 kanal 6 marlas but mutation was recorded in respect of land measuring 418 kanal 14 marlas. The validity of the judgment and decree dated 18.2.1980 was also challenged in appeal by the defendant, which was contested by the plaintiff. In case the will in question was upheld by the court, then the plaintiff could not claim ownership and possession, thus the judgment and decree dated 13.9.1990 and the mutation subsequently sanctioned in his favour were not binding upon the defendants.

On the basis of evidence brought on record, the trial Court dismissed the suit and the findings affirmed in appeal by the lower Appellate Court.

Learned counsel for the appellant submitted that the findings recorded by both the courts below is based on conjectures and surmises as the appellant in the aforesaid decree was arrayed as proforma respondents. Both the courts below have grossly erred in recording that the plaintiff was made party in appeal by the lower Appellate Court and the appellant could not have raised plea in the appeal. Plaintiff should have been arrayed as independent party in the aforesaid suit instead of being LR of Ranjit Singh. Both the courts below have failed to properly examine the oral and documentary evidence in correct perspective.

After hearing learned counsel for the appellant and appraising the paper book, I am of the view that there is no force in the submission of learned counsel for the appellant, for, it is conceded position on record that in the Civil Suit No.544 of 1991 titled Radha Devi Vs. Suraj Bhan, plaintiff was not a party but that suit was partly decreed in favour of Radha Devi-

defendant.

In the appeal, the lower Appellate Court issued notice to the present appellant and was impleaded as party. Once the appellant had become party, he could not be permitted to lay challenge in the suit. At the best, he could have availed the remedy before this Court.

Be that as it may, Ranjit Singh, father of the appellant-plaintiff in civil suit No. 544 of 1991 filed written statement (Ex.D5) and the factum of relinquishment which was in favour of the plaintiff by Ranjit Singh was not disclosed despite having knowledge. Therefore, there was intentional concealment. Nothing prevented the plaintiff to raise all the pleas in the appeal wherein he was arrayed as party. Findings of the courts below are based upon the documents placed on record as well as the evidence brought before it.

No other material has been brought on record enabling this Court to form a different opinion than the one taken by both the courts below.

No ground for interference is made out much less no substantial question of law arises for adjudication.

Dismissed.

May 13th , 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No