

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

RSA No.6125 of 2017 (O&M)
Date of Decision.26.11.2018

Kaushalaya Devi

.....Appellant

Vs

Vijay Kumar and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gulshan Nandwani, Advocate
for the appellant.

:-

AMIT RAWAL J. (ORAL)

The present regular second appeal is directed by the appellant-defendant against the judgment and decree dated 07.02.2017 passed by the lower Appellate Court whereby the suit for declaration and permanent injunction of the plaintiff dismissed by the trial Court, has been partly allowed.

The plaintiffs alleged to be owner of 3/4th share whereas defendant No.1 to the extent of 1/4th share as per the decree dated 17.04.1999 passed in Civil Suit No.469 of 1998. However, the revenue record reflected ownership of defendant No.2 to the land measuring 10 kanals 9 marlas comprised of Rect. No.35, Killa No.2/2 (5-16) and 3/1/2/2 (4-13) as '*gair maurusi*', therefore, the same was also liable to be corrected. Even the name of defendant No.1 was wrongly recorded as vendee in the revenue record with regard to land measuring 17 kanals 11 marlas comprising of Khewat No.78, Rect. No.24, Killa No.18/2(6-18), 22(8-0), 23/1/1(2-13) and also in respect of land measuring 9 kanals 12 marlas comprising of Khewat No.59,

Khatoni No.83, rect. No.22, Killa No.19 (8-0) and 20/1(1-12). The defendants on perpetual request did not agree rather extended threats to plaintiffs to dispossess.

Defendant No.1 was proceeded ex parte. Defendant No.2 opposed the suit by asserting that civil appeal against the judgment and decree passed in Civil Suit No.368 of 2004/2008 with regard to same subject matter is pending adjudication. The plaintiffs had the knowledge of the revenue entries and therefore, decree did not have the binding effect.

Trial Court on the basis of pleadings framed the following issues:-

“1. Whether the plaintiff is entitled to a decree of declaration in his favour and against the defendant?

OPP

2. Whether the plaintiff is entitled for a decree of permanent injunction in his favour and against the defendant? OPP

3. Whether the suit is not maintainable in the present form? OPD

4. Whether the plaintiff has no locus-standi and cause of action to file the present suit? OPD

5. Whether the plaintiff is stopped by his own act and conduct from filing the present suit? OPD

6. Whether the plaintiff has concealed material facts from the Court? OPD

7. Relief.”

The plaintiffs examined five witnesses and brought on record Ex.P1 to P13 and Ex.PW5/1 and PW5/2. Defendants examined two witnesses and brought on record Ex.DA to DI and Ex.DW2/A.

On preponderance of evidence, the trial Court dismissed the suit, however, the lower Appellate Court partly decreed the same. Plaintiff No.2 Har Chand had died.

An application under Order 41 Rule 27 CPC seeking permission to placing on record certified copy of judgment and decree dated 29.11.2014 rendered in Civil Appeal No.104 of 2011/12 in which judgment and decree of 1999 was affirmed, was dismissed.

Mr. Nandwani, learned counsel appearing on behalf of the appellant submitted that the lower Appellate Court has erred in law in not appreciating the fact that the plaintiffs themselves admitted to be co-sharers to the extent of 1/4th share and the decree of 1999 against the appellant-defendant No.2, in the absence of her impleadment, was not binding. The second suit was hit by doctrine akin to res judicata. The aforementioned relief could have been taken in the previous suit, therefore, even provisions of Order 2 Rule 2 CPC would also apply.

I am afraid aforementioned argument is not sustainable, as the decree dated 17.04.1999 was suffered by respondent No.1 Ganga Ram in favour of the plaintiffs. In such circumstances, their status in the suit land was of a co-sharer to the extent of 3/4th. The decree has already attained finality. Kaushalaya Devi had challenged the said decree in Civil Suit No.368/2004/2008, which was dismissed

vide judgment and decree dated 25.03.2011 Ex.P2 and Ex.P3 as she failed to prove possession on any part of the suit property as *gair maurusi*. Even the appeal filed by appellant-defendant No.2 against the aforementioned judgment was also dismissed vide judgment and decree dated 29.11.2014 and the same was sought to be placed on record by way of additional evidence. Appellant-defendant No.2 miserably failed to prove exclusive possession of the suit property as *gair maurusi* on payment of *batai*. The revenue record brought on record as per the provisions of Section 44 of the Land Revenue Act carried presumption of truth, which has gone un rebutted. It is also proved on record that the suit property at the hands of Ganga Ram was self-acquired, thus, he was competent to transfer it vide decree dated 17.04.1999. The entry in the revenue record would not be relevant for the purpose of counting limitation as it would only be considered when there is threat to the title, thus, the objection of limitation is also not tenable.

In view of the aforementioned observations, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, 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.

(AMIT RAWAL)
JUDGE

November 26, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No