

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

RSA No.2445 of 1998(O&M)

Date of decision: 29.10.2019

Azad and anotherAppellants

VERSUS

DaudRespondent

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. C.B. Goel, Advocate for the appellants.

 Mr. Sudhir Aggarwal, Advocate for the respondent.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for possession of agricultural land measuring 8 kanal 7 marlas was dismissed.

Aasoo (since deceased) represented by his LRs filed suit for possession on the allegations that respondent/defendant obtained fictitious and fraudulent decree dated 05.01.1984 in respect of suit land, in civil suit No.408 of 03.09.1983. The said decree was challenged by Azad Mohammad son of the plaintiff in civil suit No.90 of 06.02.1987 wherein it was held that decree dated 05.01.1984 was a nullity and plaintiff was declared to be owner of suit land. The decree passed in suit No.90 of 06.02.1987 has attained finality between the parties and observations of the civil Court would operate as res judicata between parties to the suit. The defendant/respondent came in possession of the suit land on or about 12/20.01.1986 after redeeming the same from one Bhagwan Dass etc. for

Rs.8000/- as earlier the suit land along with other land totaling 16 kanal 17 marlas was mortgaged with said Bhagwan Dass etc. The defendant had received the proportionate mortgage amount of the suit land from Azad Mohammad in suit No.325 of 1984 decreed on 30.01.1986 in which Azad Mohammad had deposited the pre-emption amount including mortgage amount.

The respondent/defendant filed the written statement and in turn raised preliminary objections regarding locus standi; maintainability; cause of action; limitation and estoppel etc. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

Replication to the written statement of the defendant was filed wherein the appellant reiterated his stand and controverted the allegations of the written statement.

The trial Court framed issues, reproduced in para 3 of the judgment of said Court. Having heard counsel for the parties in the light of materials on record, issues No.1, 2 and 5, taken up jointly for discussion and decision were answered against the appellant/plaintiff and accordingly the suit was dismissed with costs. The appeal preferred by unsuccessful plaintiff did not find favour with District Judge, Faridabad and the Appellate Court affirmed findings of the trial Court without variance.

The sole submission made by counsel for the appellant is that the trial Court in case No.90 of 06.02.1987 titled Azad Mohammad Vs. Daud and another in para 15 of the judgment has held that decree dated 05.01.1984 does not affect ownership right of defendant No.2 and hence it is nullity and accordingly issue No.1 "Whether decree dated 05.01.1984 does not affect rights of ownership of defendant No.2 as alleged? OPP"

was decided. It is argued with vehemence that as decree dated 05.01.1984 is held to be a nullity qua right of ownership of Aasoo (defendant No.2 therein), Aasoo (since deceased) is entitle to recovery of possession of suit land on the basis of title.

Counsel representing the respondent/defendant, on the contrary, would argue that the appellant cannot derive any advantage to his contention from any observations/findings on issue No.1 in the said litigation as suit filed by Azad Mohammad to challenge the decree dated 05.01.1984 was dismissed vide decree and judgment dated 31.08.1989 that has attained finality. Aasoo, the erstwhile owner against whom decree dated 05.01.1984 was passed in civil suit No.408/1983 never challenged decree dated 05.01.1984, therefore, the said decree is binding against the appellant and the Courts have rightly rejected his claim for possession of suit land on the basis of decision dated 31.08.1989 in case No.90 of 06.02.1987 Ex.P3. It is further argued that the appellant is guilty of mis-stating the facts that suit filed by Azad Mohammad was decreed when otherwise this plea is contrary to records.

I have heard counsel for the parties, perused the paper-book and records.

The first question that falls for consideration is whether the decree dated 05.01.1984 has ever been set aside in competent proceedings or to say whether Aasoo can claim ownership of the suit land in view of decision dated 31.08.1989 in case No.90 of 06.02.1987.

Perusal of judgment dated 31.08.1989 in case No.90 of 06.02.1987 Ex.P3 makes it evident that the Court framed seven issues including the issue of relief. The Court in para 15 of the judgment has

recorded its conclusion that decree dated 05.01.984 does not affect ownership right of Aasoo and hence it is nullity and issues No.1 and 2 were decided accordingly. However, in penultimate para No.21 under the heading 'Relief', the Court has held to the following effect:-

"Summing up the entire discussion, it is held that decree dated 05.01.1984 is a nullity. Defendant No.2 is declared to be owner of the suit property, defendant No.1 is found in possession of suit land but no locus standi accrues to the plaintiff. The suit of the plaintiff is, therefore, dismissed with no order as to costs. Decree sheet be prepared accordingly and file be consigned to the records."

As per decree Ex.P4, the material part reads as follows:-

"And it is ordered that suit of the plaintiff is dismissed with no order as to costs."

Counsel for the appellant is not in a position to dispute that since suit filed by Azad Mohammad to challenge decree dated 05.01.1984 was dismissed by the trial Court, the respondent/defendant impleaded as a party in the said suit was not competent to challenge the decree dated 31.08.1989. Since suit filed by Azad Mohammad was dismissed, the appellant cannot derive any advantage to his contention from the observations made by the trial Court in the judgment dated 31.08.1989 to contend that decree dated 05.01.1984 stands set aside and he is entitle to recover possession of suit land by claiming himself to be owner of the suit property. In this view of the matter, the aforesaid question is answered against the appellants and in favour of the respondent. In view of the

above, I do not find an error much less perversity in consistent findings recorded by the Courts.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed with costs.

OCTOBER 29, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no