

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 3168 of 2019 (O&M)

Date of decision : August 19, 2019

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Surinder Singh

.....Appellant

Versus

Kamlesh (Deceased) through LR's and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. S.P Soi, Advocate for the appellant.

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RITU BAHRI, J.

The appellant-plaintiff has come up in regular second appeal against the judgment of the lower appellate Court dated 12.3.2019 whereby an appeal filed by the appellant-plaintiff against the judgment and decree dated 27.4.2018 passed by the Civil Judge (Jr. Division), Nakodar has been dismissed. Vide the trial Court judgment dated 27.4.2018, suit of the plaintiff-appellant for declaration for grant of decree to the effect that the plaintiff and defendants no. 2 and 3 (Proforma) are owner in possession of the land measuring 13 kanal 14 marlas in equal share to the extent of 1/3rd each from the land measuring 91 kanal 9 marlas (as detailed in the head note of the plaint) and for further declaration to the effect that the decree passed in Civil Suit No.463 of 2004 by the Court of the then Addl. Civil Judge

(Senior Division), Nakodar is null, void and is not binding on the rights of the plaintiff and defendants no. 2 & 3, was dismissed.

Briefly stated, the facts of the case are that Balwant Ram alias Balwinder Ram son of Chint Ram husband of defendant no.1 and father of defendants no. 1(a) and 1(b) was previously co-sharer in the property measuring 91 kanals 9 marlas as fully detailed in the head note 'A' of plaint. Balwant Ram alias Balwinder Ram sold the land measuring 20 kanals 17 marlas to defendant no.1 vide registered sale deed dated 05.08.1977 and defendant no.1 got entered and sanctioned the mutation No.1121 in her favour. Plaintiff and defendants nos. 2 & 3 purchased land measuring 5 kanal 14 marlas from defendant no.1 vide registered sale deed dated 10.10.1980 and mutation no.1207 was also sanctioned in favour of plaintiff and defendants no. 2 & 3. Plaintiff and his brothers defendants no. 2 & 3 further purchased land measuring 8 kanals being 160/1829 share of land measuring 91 kanals 9 marlas and thus became owners in possession of land measuring 13 kanals 14 marlas from the property of 91 kanals 9 marlas. Thereafter plaintiff and defendants no. 2 & 3 purchased the land measuring 8 kanals from Balwant Ram, husband of defendant no.1 vide registered sale deed dated 26.12.1983 and mutation no.1242 was sanctioned in favour of plaintiff and defendants no. 2 & 3. The name of defendant no.1 did not figure in the jamabandi for the year 1983-1984. The decree in favour of defendant no.1 and Civil Suit No. 463 of 2004 decided on 21.11.2007 is on account of fraud and misrepresentation.

After notice, defendants no. 1 to 3 appeared and filed written statements.

Following issues were framed by the trial Court:

- 1. Whether plaintiff is entitled for relief of declaration as prayed for? OPP*
- 2. Whether plaintiff is entitled for relief of permanent injunction as prayed for ? OPP*
- 3. Whether plaintiff is entitled for alternative relief of joint possession as prayed for ? OPP*
- 4. Whether the suit is not maintainable?*
- 5. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
- 6. Whether the plaintiff has concealed the true and material facts from this Court? OPD*
- 7. Whether the plaintiff has not come to the court with clean hands? OPD*
- 8. Whether the plaintiff is estopped to file the present suit by his act and conduct? OPD*
- 9. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
- 10. Whether suit is barred for non joinder and misjoinder of necessary parties? OPD*
- 11. Whether the suit is bad U/o 7 rule 1(J) CPC and order 2 rule 2 CPC? OPD*
- 12. Whether the plaintiff is a false suitor? OPD*
- 13. Whether the present suit is time barred? OPD*

After going through the evidence led, both the Courts observed that there was earlier litigation between the parties with respect to the same suit property. Smt Kamlesh-defendant no.1 had filed the civil suit No.463

of 2004 for declaration and possession claiming herself to be owner in possession of the same suit land which was subject matter of the suit against Surinder Singh, Darshan Singh and Joginder Singh. Both the Courts further observed that Civil suit No.463 of 2004 was finally decided vide judgment and decree dated 21.11.2007. The plaintiff-Surinder Singh who was defendant no.3 in the civil suit No.463 of 2004 raised all the issues involved in present suit as his ground of defence. While decreeing the civil suit No.463 of 2004, the sale deeds dated 05.08.1977 (Ex.P2), sale deed dated 10.10.80 (Ex.P4) and sale deed dated 26.12.1983 (Ex.P6) were led in evidence but the execution of the above said sale deeds could not be proved by the plaintiff in that suit and the civil suit filed by Kamlesh was decreed. Appeal against the said judgment was dismissed by the Court of learned Additional District Judge vide judgment and decree dated 13.12.2010 (Ex. D3 and Ex.D4). Regular Second appeal filed against the aforesaid judgment and decree dated 21.11.2007 (Ex.P-7) and the judgment and decree dated 13.12.2010 (Ex.D3 and Ex.D4) before this Court was also dismissed vide judgment dated 8.7.2011 (Ex.D5) and thereafter, the plaintiff Surinder Singh had filed the present suit for declaration despite this fact that he has lost his earlier litigation as discussed hereinbefore between the same parties to the present suit. The appellant-plaintiff had all the opportunities to lead evidence with regard to fraud in civil suit No.463 of 2004 titled as ***“Kamlesh vs. Joginder Singh and others”***.

After going through the judgments passed by the trial Court and the lower appellate Court, no ground is made out to interfere with the findings of facts recorded by both the Courts below. No substantial question arises for consideration in the present regular second appeal.

Hence, the same is hereby dismissed.

August 19, 2019
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No