

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 3726 of 2019 (O&M)

Date of decision : November 15, 2019

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Baldev Singh

.....Appellant

Versus

Harinder Singh and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Anupam Bhanot, Advocate for the appellant.

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RITU BAHRI, J.

C.M No. 10112-C of 2019

Prayer made in the application is for condonation of delay of three days in filing the appeal.

For the reasons mentioned in the application, the delay of three days in filing the appeal is hereby condoned. C.M is allowed.

RSA No. 3726 of 2019

Baldev Singh, appellant-defendant No. 1 has come up in the present appeal against the judgment dated 28/03/2019 passed by the Additional District Judge, Ferozepur, whereby the appeal filed against the judgment and decree dated 24/11/2017 passed by the Civil Judge (Junior Division) Ferozepur was dismissed. Vide the trial court judgment, the suit filed by Harinder Singh respondent no.1-plaintiff was decreed in favour of

the plaintiff and against the defendants.

The plaintiff had filed a suit for decree of declaration to the effect that the judgment and decree dated 16/03/2011 passed by Civil Judge (Junior Division), Ferozepur in the case titled as '*Baldev Singh son of Beghal Singh versus Udheybir Singh son of Manjit Inder Singh Sodhi and others*' regarding suit for specific performance of the agreement of 1/4th share of Bungalow No. 30, Mall Road Ferozepur Cantt on the basis of agreement dated 17/03/1993 alleged to be executed by defendants No. 2 to 6 in favour of defendant No. 1, was illegal null and void and sale deed dated 10/12/2014 propounded by defendant No. 1 was also illegal null and void. By the way of the suit, the plaintiff also sought relief of permanent injunction restraining defendant No. 1 to implement the judgment and decree dated 16/03/2011 and further to obtain the possession of one-fourth share of Bungalow No. 30 Mall road, Ferozpur Cantt. in the execution proceedings.

Briefly stated, the facts of the case, as set by the plaintiff are that Sarwinder Singh son of Hari Singh was the lawful owner in possession of house in question. He expired on 20/07/2013. During his lifetime, the deceased executed will dated 03/03/2013 in favour of plaintiff Harinder Singh. It was averred that the price of the bungalow in question is in crores and defendant no.1 in connivance with defendants No. 2 to 6 forged alleged agreement dated 17/03/1993 regarding one-fourth share of house/Bungalow at a very meagre price. The judgment and decree dated 16/03/2011 was passed by Smt. Daljit Kaur Civil Judge (Junior Division) Ferozpur for specific performance of the agreement regarding one fourth share of the house in question. Sarwinder Singh was alive when the judgment and decree

dated 16.3.2011 was passed, but, he was not impleaded as party in the above said suit. Similarly, defendant No. 7 Smt. Harbans Kaur widow of Mithan Singh, who was also residing in one of the portion of house in question for so many years was not impleaded as a party. The plaintiff further referred to the judgment and decree passed on 07/04/2006 in favour of Sarwinder Singh son of Hari Singh and against defendants No. 2 to 6 on the basis of legal and valid will dated 26/05/1952 executed by Hira Devi, mother of deceased Sarwinder Singh. In another judgment and decree passed by Sh. T.N. Gupta Senior Sub Judge, Ferozpur on 29/03/1977, only Sarwinder Singh was declared to be the only lawful and true owner in possession. Rajinder Kaur sister of Sarwinder Singh predecessor in interest of defendants also claimed succession regarding the house in question in the said suit but in view of the findings of the civil courts Sarwinder Singh was declared to be the lawful owner. The findings given in judgment and decree dated 29/03/1977 was confirmed by the judgment and decree passed by Ms. Sunita Kumari Civil Judge senior division Ferozepur on 07/04/2006. The defendant No. 1 filed the execution application for enforcement of judgment and decree dated 16/03/2011 passed by Smt. Daljit Kaur PCS Civil Judge (Junior Division) Ferozepur and the warrant of possession was issued at the instance of defendant No. 1 and Darshan Singh bailiff went on the spot for enforcement of the warrant of possession on 10/02/2015 and reported that proceeding cannot be conducted and submitted his report on 10/02/2015. The plaintiff immediately came to know regarding the above said execution proceeding and filed the objection and the warrant of possession was not implemented in view of the objections. Similarly Harbans Kaur who is in occupation of some portion of Bunglow No. 30 also filed a detailed

objection and the warrant of possession was withheld. The counsel for the plaintiff inspected the file of the execution proceeding and it transpired that the aforesaid judgment and decree dated 16.3.2011 was passed against defendants No. 2 to 6.

Upon notice, defendant No. 1, through his counsel, put in appearance in the court, but, failed to file written statement within the statutory period. Defendants No. 2 to 6 did not appear to contest the claim of the plaintiff despite service and they were proceeded against ex parte. Defendant No. 7 contested the suit on merits.

Following issues were framed by the trial court:

1. Whether the plaintiff is entitled to decree for declaration as prayed for? OPP
2. Whether plaintiff is entitled for consequential relief of permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is maintainable in its present form? OPP

After hearing the respective submissions of the parties and after going through the evidence led by the parties, both the Courts decreed the suit of the plaintiff. Appellate Court observed that vide judgment and decree dated 07/04/2006, Sarwinder Singh, grandfather of the plaintiff has been declared owner of the house in question, whereas, sister of Sarwinder Singh, namely Rajinder Kaur was never declared owner of the house in question. Certified copies of judgments passed by the courts were proved on record as Ex. P5 to Ex. P8. Counsel for the plaintiff also proved on record copy of judgment and decree passed by Sh. K.K Bansal the then ACJSD, Ferozepur

as Ex. P 11 and Ex. P 12 on record. From its perusal, it was clear that Sarwinder Singh, predecessor in interest of the plaintiff, was in actual and physical possession of the suit land. The regular second appeal filed against the said judgment by the LRs of Rajinder Kaur was also dismissed vide order dated 14/03/2011 passed by this court and further special leave petition was also dismissed by the Supreme Court of India vide order dated 04/07/2011. Thus it was held that Rajinder Kaur had no title or interest in the suit land and thus her legal heirs had no right to enter into present agreement to sell the house in question, on the basis of which, decree of specific performance was granted. Thus, from the perusal of all the documents, it revealed that Sarwinder Singh predecessor in interest of plaintiff has been declared exclusive owner of the house in question by all the competent courts. It was eventually observed that defendants No. 2 to 6 being LRs of Rajinder Kaur had no right to execute agreement to sell the house in question.

In the facts of the present case, defendant no.1-Baldev Singh filed the suit for specific performance in the year 2006 i.e after the lapse of more than 13 years after the alleged execution of the agreement to sell in question which further raises a suspicion. The said suit was filed on 20.12.2006 after the decision rendered by the Court of Ms. Sunita Kumari the then Civil Judge Senior Division Ferozepur on 7.4.2006. Plaintiff, namely Sarwinder Singh was declared owner of the house in question as per the registered Will dated 03.03.2013 vide judgment and decree dated 7.4.2006. In that suit, defendants nos. 2 to 6 were proceeded against ex parte and defence of defendant no.1 was struck off. In this backdrop, the trial Court had rightly held that the judgment and decree dated 16.3.2011

was a result of collusion between the parties and the sale deed dated 10.12.2014 executed and registered on the basis of judgment and decree dated 16.3.2011 is inconsequential. Both the Courts have rightly restrained the defendants from implementing the judgment and decree dated 16.3.2011 and to obtain the possession of $\frac{1}{4}^{\text{th}}$ share of Bungalow no.30, Mall Road, Ferozepur Cantt in execution proceedings. Plaintiff being the legal heir of Sarwinder Singh is the owner in possession of the house in question. The lower appellate Court while dismissing the appeal has further observed that person who is claiming to be legal heir of Sarwinder Singh can claim her right from the plaintiff by way of filing separate suit and no case is made out to remand the case for a fresh decision. This finding has been rightly given by the lower Appellate Court.

In view of all that has been discussed above and after going through the judgments passed by both the Courts below, there is no illegality or infirmity in them warranting interference of this Court. Hence, they are upheld and the present regular second appeal is hereby dismissed.

November 15, 2019

*ritu***(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No