

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

RSA No.3525 of 2010 (O&M)

Date of decision : 01.04.2019

Mohan Lal Pippal

...Appellant

Versus

Smt. Shanti Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Sarthak Gupta, Advocate for the appellant.

Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate for the respondents.

ANIL KSHETARPAL, J.

Defendant-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Plaintiff-respondent No.1 filed a suit for declaration to the effect that the judgment and decree dated 24.12.1987 and consequent mutation of the land are void, ab initio, illegal and not binding on the rights of the plaintiff. It may be noted here that the previous suit was filed by the defendants claiming that there is exchange of properties between plaintiff and defendants. Smt. Ganga Devi, plaintiff in the aforesaid suit and the defendant herein (appellant is legal heirs of Ganga Devi) claimed that she has been allotted residential plots in Rewari and Shanti Devi who is owner of the suit land have exchanged their properties. In other words, Smt. Shanti

Devi has in lieu of suit land have received plots at Rewari. The written statement was filed admitting the contents of the plaint and the learned Court passed a decree on the basis of consent of the parties.

Smt. Shanti Devi, plaintiff-respondent filed a suit challenging the aforesaid judgment and decree and consequent mutation claiming that Smt. Ganga Devi was never owner of any residential plot at Rewari. Husband of Ganga Devi who was MLA, was very clever. Initially, they jointly started a business of hatchery in partnership which after sometime same was closed and a new business was started which also did not yield profits and accordingly defendant-Ganga Devi retired. The civil decree has been obtained by misrepresentation and fraud.

Defendant contested the suit and pleaded that in fact, there were no plots and the property was purchased by the defendant and her husband from their own resources but the land measuring 1 ½ acres was purchased in the name of plaintiff-Shanti Devi. The entire sale consideration was paid by Ganga Devi-defendant alongwith her husband.

Both the Courts on appreciation of evidence have concurrently found that the decree passed was result of misrepresentation and fraud. It may be noted here that on the property in dispute, a marriage hall has been constructed which belongs to the husband of the plaintiff-Shanti Devi.

This Court has heard learned Senior Counsels for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned Senior Counsel appearing on behalf of the appellant has raised two arguments:-

- 1) Suit filed by the plaintiff was barred by limitation.
- 2) Suit filed by the plaintiff was not maintainable in view of bar to the maintainability of the separate suit under Order 23 Rule 3-A of the Code of Civil Procedure.

As regards first argument, it is pleaded case of the plaintiff that the decree is result of fraud. Still further, both the Courts have found that it is the plaintiff who is in possession through her husband.

Both the Courts have recorded a finding that the decree is result of fraud and misrepresentation as the decree was obtained on the basis of exchange of the property whereas there was no property existed which defendant-appellant gave to the plaintiff-respondent in exchange of the suit property. Thus, the limitation would begin to run from the date of knowledge. It has been specifically pleaded by the plaintiff that the cause of action accrued 1½ month before filing of the suit when the defendant who had been assuring the plaintiff to return back the property refused. Hence, the suit has been correctly held to be within limitation by the Courts below while discussing issue No.3. Still further, judgment and decree which has been passed on the basis of consent is void. A consent decree passed is merely a contract between the parties with seal of the Court thereon. Once, the contract itself is void, no title passes in favour of defendant-Ganga Devi.

Next argument of the learned counsel for the appellant is also incorrect because under Order 23 Rule 3-A of the Code of Civil Procedure, a separate suit to challenge a decree obtained on the basis of a compromise is not maintainable. There is a mark difference between the decree which has been passed in accordance with Order 23 Rule 3 of the Code of Civil

Procedure i.e. on the basis of compromise vis-a-vis decree passed by the Court under Order 12 Rule 6 of the Code of Civil Procedure which are the judgments on admissions. The Bar to the maintainability of the suit under Order 23 Rule 3-A of the Code of Civil Procedure is only with respect to decrees passed on the basis of compromise and not on the basis of the consent. This aspect has been examined in detail by this Court in case **RSA No.1550 of 2006, titled as Dalip Singh and another Vs. Sukhwinder Singh and others, decided on 07.12.2018.** For the detailed reasons stated therein, the suit filed by the plaintiff-respondent was/is maintainable.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

01.04.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No