

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

(1) RSA-597-2015(O&M)

Sombir and others

...Appellants

Versus

Smt.Santosh and others

...Respondents

(2) RSA-601-2015(O&M)

Surender and others

...Appellants

Versus

Smt.Santosh and others

...Respondents

Date of Decision:-28.8.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vinod S.Bhardwaj, Advocate
for the appellants in both appeals.

Mr.Sohan Singh Rana, Advocate for
Dr.Parveen Hans, Advocate for respondent No.1
in both appeals.

H.S. MADAAN, J.

By this order, I shall dispose of two RSAs i.e. RSA-597-

2015 & RSA-601-2015 filed on behalf of appellants.

Briefly stated, facts of the case are that plaintiff Smt.Santosh Devi wife of Sh.Raghubir Singh son of Sh.Phool Singh aged about 30 years, resident of village Bamla, Tehsil and District Bhiwani had brought a civil Suit No.252 of 2002 against defendants i.e. Santosh Devi (since dead) through her legal representatives and others seeking a declaration that she is owner in possession of land measuring 111 kanals 1 marla to the extent of 1/3rd share, coming to 37 kanals on the basis of decree dated 5.2.1994 passed by Sub Judge Ist Class, Bhiwani and that the sales effected by defendant No.1 in collusion with defendants No.2 to 9 are illegal, null and void without any right, with consequential relief of permanent injunction restraining the defendants from alienating, transferring, mortgaging the suit land to any other person.

As per the case of plaintiff, on account of exchange of land between the plaintiff and defendant No.1, a judgement and decree dated 5.2.1994 were passed in Civil Suit No.498 of 1993 by the Court, resultantly, the plaintiff became owner in possession of the exchanged land i.e. suit land, however defendant No.1 without getting the suit land partitioned had sold the same to defendants No.2 to 9 vide several sale deeds, who threatened to sell the land further and to interfere in the peaceful possession of the plaintiff over the suit land. Feeling aggrieved, the plaintiff had brought the suit in

question.

On notice, the defendants had appeared and filed written statements. Defendant No.1 had filed a separate written statement, whereas defendants No.2 to 9 came up with a separate joint written statement.

In the written statement filed by the former, she had challenged the maintainability of the suit contending that plaintiff was estopped by her own act and conduct from filing the suit and she had no locus standi to bring the suit. On merits, the answering defendant contended that judgment and decree dated 5.2.1994 claimed by the plaintiff had never been acted upon; further the answering defendant was not owner in possession of the suit land, as such she was not competent to get the judgment and decree dated 5.2.1994 passed from the Court and further defendants No.2 to 9 are owners in in possession of the suit land by virtue of their respective sale deeds.

Whereas in the joint written statement submitted on behalf of defendants No.2 to 9, they had also taken various legal objections and on merits contending that the answering defendants were bona-fide purchasers for consideration without notice and as such were protected under Section 41 of Transfer of Property Act; that no right was conferred upon the plaintiff on the basis of judgment and decree dated 5.2.1994; that the answering defendants

are owners in possession of the suit land on the basis of sale deeds executed in their favour and plaintiff has no right or concern with the land in question.

All the defendants prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to any relief of declaration as prayed for? OPP.
2. Whether the plaintiff is entitled to any relief of permanent injunction as prayed for? OPP.
3. Whether the suit of plaintiff is not maintainable in the present form? OPD.
4. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD.
5. Whether the plaintiff has no locus standi to file the present suit? OPD.
6. Relief.

In order to prove her case, the plaintiff got her statement recorded as PW1 besides examining Sh.Naresh as PW2, Sh.Bhalle Ram Rapria, Advocate as PW3, Sh.Sumer Singh, Advocate as PW4 and Sh.Jaideep as PW5.

On the other hand, the defendants had examined Sh.Heera Singh as DW1, Sh.Roshan Lal as DW2, Sh.Samunder

Singh as DW3, Sh.Dilbag Singh as DW4, Sh. Shamsheer Singh Malik as DW5 and Sh.Ranjit Singh, Advocate as DW6.

It may be mentioned here that another Civil Suit No.472 of 2003 was filed regarding the same property by plaintiffs Sombir, Sube Singh, Roshan Lal, Vikram, Surender, Rohtasi, Santosh and Rohtan. In that suit some of plaintiffs were defendants in the first suit, against Smt. Santosh Devi daughter of Amar Singh and wife of Sh.Hira Singh and Smt.Santosh wife of Raghbir Singh son of Phool Singh. In the said civil suit, the plaintiffs had repeated the assertions taken by them in the written statement filed in the earlier suit contending that judgment and decree dated 5.2.1994 suffered by defendant No.1 in favour of defendant No.2 are absolutely wrong, against law and facts, without jurisdiction not binding on their rights since the same are result of collusion between defendants No.1 and 2. They also sought relief of permanent injunction restraining defendant No.2 from interfering in peaceful possession of the plaintiffs over the suit land and from taking forcible possession. They claimed ownership rights on the basis of sale deed in their favour executed by Smt.Santosh Devi daughter of Amar Singh and wife of Hira Singh through her husband. The plaintiffs in that suit claimed themselves to be bona-fide purchasers for consideration.

On getting notice, the defendants appeared. Issues on merits were framed and the parties were afforded adequate

opportunities to lead their evidence.

The two suits stood consolidated since they related to the same property between almost the same parties by Civil Judge(Sr.Divn.), Bhiwani.

After hearing the learned counsel for the parties, the trial Court dismissed the Civil Suit No.252 of 2002, whereas Civil Suit No.472 of 2003 was decreed and a declaration was granted to plaintiffs to the effect that they are owners in possession to the extent of their respective shares in the suit land on the basis of sale deeds and the judgment dated 5.2.1994 suffered by defendant No.1 in favour of defendant No.2 was set aside.

Smt.Santosh Devi wife of Raghbir Singh, plaintiff in Civil Suit No.252 of 2002 and defendant No.2 in Civil Suit No.472 of 2003 was aggrieved by the said judgment and decree and she had filed two separate appeals before the Court of District Judge, Bhiwani, which were assigned to Additional District Judge, Bhiwani, who disposed of the two appeals vide a single judgment dated 23.1.2015, in the process setting aside the judgment and decree passed by the trial Court, decreeing the suit filed by the plaintiff bearing Civil Suit No.252 of 2002 and the plaintiff was declared to be owner of the suit property whereas respondents were restrained from interfering in the possession and from alienating the suit property in any manner and the sale deeds vide which, the

respondent-plaintiffs (defendants No.2 to 9) became owners of the suit property were set aside. Both the appeals filed by the appellant were allowed with costs.

The defendants in Civil Suit No.252 of 2002, who are plaintiffs in connected Civil Suit No.472 of 2003 felt aggrieved and they have filed the two separate appeals before this Court, praying that those be accepted, the judgment and decree passed by the First Appellate Court be set aside and those of the trial Court be restored.

Notice of the appeals was given to respondents and respondent No.1, Smt.Santosh, who is the contesting respondent has put in appearance through counsel.

I have heard learned counsel for the parties and I find that there is absolutely no merit in both the appeals.

The judgment and decree passed by the trial Court were not sustainable being product of non-application of mind and total misappraisal of evidence and wrong interpretation of law. The moot question to be answered was as to whether after passing of judgment Ex.P6 and decree Ex.P7 in Civil Suit No.498 of 1993 on the basis of exchange between Santosh Devi wife of Raghbir Singh son of Phool Singh and other Santosh Devi daughter of Amar Singh and wife of Hira Singh in terms of which plaintiff Santosh Devi wife of Raghbir Singh had acquired interest in the suit land and Santosh Devi daughter of Amar Singh wife of Hira Singh was not left with any

right or interest therein, the latter could sell off the land to her co-defendants. The trial Court has completely fell in error in coming to the conclusion that since mutation was not got sanctioned on the basis of the judgment and decree in question and those had not been acted upon and further Santosh Devi plaintiff had furnished an affidavit in that regard, therefore, the judgment and decree could not be enforced. That was a totally wrong conclusion drawn by the trial Court. Once judgment and decree were passed on the basis of exchange, the title stood transferred. The law is well settled that mutation does not confer any title and it merely records the changes in ownership with regard to the property bearing khasra numbers. Even otherwise, the revenue record is not document of title and such record is prepared for fiscal purposes only. The defendants, who are appellants before this Court cannot get better title than that of their vendor, who as a result of passing of judgment and decree in question was not left with any right or interest in the suit land. Therefore, they can certainly not claim protection of Section 41 of the Specific Relief Act claiming themselves to be bona-fide purchasers for consideration without notice.

Learned Additional District Judge, Bhiwani has dealt with all these aspects in a proper and appropriate manner and has rightly decreed the Civil Suit No.252 of 2002 and dismissed the Civil Suit No.472 of 2003 by giving proper reasoning considering the

factual and legal position in proper perspective. It stands proved on the record that on the basis of exchange judgment Ex.P6 and decree Ex.P7 were passed by the Court in Civil Suit No.498 of 1993. The defendants cannot possibly deny their existence. It is neither pleaded nor proved that the judgment and decree were result of any fraud or misrepresentation etc. No advantage can be taken of the fact that mutation had not been got sanctioned on the basis of decree Ex.P7. As it is discussed above, there could not be any question of parties later on mutually agreeing not to implement the judgment. Once judgment and decree had been passed, which had not been challenged or set aside, those had attained finality and their existence could not wished away or denied in such a manner. The transferees from Santosh Devi daughter of Amar Singh wife of Hira Singh cannot possibly find any fault with the judgment and decree passed earlier to execution of sale deeds in their favour. As a matter of fact, if at all any fraud was played, it was by their vendor and her husband Hira Singh and not by Santosh Devi wife of Raghbir Singh. As far as affidavit Ex.DW6/A said to have been executed by Santosh Devi wife of Raghbir Singh, no legal value can be attached to it as has been rightly discussed by First Appellate Court in para No.38 of the judgment and the judgment and decree could not possibly be set aside or their implementation stopped in such a manner.

Learned counsel for the appellants has referred to

authorities *Jagdish and others Versus Om Parkash and others, 2005(4) RCR(Civil)406, Hamja Haji Versus State of Kerala and another, 2006(4) CivCC 407, Ombir and another Versus Mohinder and others, 2006(4) RCR(Civil) 798* and *Sukha Singh Versus Jasvinder Singh, 2001(4) RCR(Civil)689*. However, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

Thus I do not find any illegality or infirmity in the judgment passed by the learned First Appellate Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Finding no merit in the appeals, the same stand dismissed.

28.8.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No