

RSA No. 4357 of 2018(O&M)

1

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

**RSA No. 4357 of 2018(O&M)
Date of decision: 04.12.2019**

Shanti Devi

... Appellant

Versus

Jasbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Parveen Sharma, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial court, vide judgment and decree dated 05.02.2014, and as even the appeal preferred against the said decree failed and was dismissed on 18.5.2016, she is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for a declaration that judgment and decree dated 7.5.1994 rendered in Civil Suit No. 367/1994 was null and void, and as a result, all the transfers thereafter affecting the rights of the plaintiffs were also invalid.

In brief, the case set out by her was that she was owner in possession of a land measuring 31 kanals 16 marlas, comprised in specific khasra numbers depicted in the cause title of the plaint, out of total land measuring 859 kanals 7 marlas, situated at village Rahra, Tehsil Assandh, District Karnal. The suit property was owned by Churia, husband of plaintiff No.1 and father of plaintiff No.2, and post his death, it devolved

upon the plaintiffs, who were in cultivating possession. Plaintiff No.1 was illiterate, rustic and pardanashin lady, and in the year 1994, as she required funds to marry her daughter (plaintiff No.2), she requested her son to lease out the suit land. Resultantly, on 25.4.1994, her son, namely Subhash, took her to the District Courts, Karnal, on the pretext of executing a power of attorney in his favour to obtain loan for the marriage. Accordingly, her thumb impressions were obtained on certain papers. Subsequently, Subhash died in the year 1998 and plaintiff started leasing out the suit property herself. However, in October, 2009, defendants No. 1 to 8 came to the suit property and proclaimed to be owners and they even tried to forcibly dispossess the lessees of the plaintiffs. Upon enquiries and examining the revenue records, it transpired that Subhash had obtained a decree by playing fraud upon her. Thus the suit.

Defendants No. 9 to 11 were given up by the plaintiffs vide statement dated 16.11.2010. Whereas, contesting respondents No. 1 to 8, in the written statement filed by them, controverted the claim of the plaintiffs and claimed themselves to be owners in possession of the suit property. Further, plaintiff had even earlier filed Civil Suit No. 27/1997 against Subhash and defendant No.1, wherein the matter was compromised between the parties and the said suit was dismissed as withdrawn. Subsequently, Subhash sold the suit property in favour of Jasbir Singh, vide sale deed dated 25.4.1997; in favour of Parveen Kumar and Vinay Kumar, vide sale deed dated 17.12.1997; and in favour of Ram Kumar, Raj Kumar, Ram Niwas, Surender and Mahender, vide sale deed dated 18.1.1995. Thus, the contesting respondents were bonafide purchasers for consideration. Hence, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that suit property was earlier owned by Churia, and post his death, it devolved upon his wife (appellant), daughter and son (Subhash). Subsequently, vide judgment and decree dated 7.5.1994 in civil suit No. 367 of 1994, suffered by the plaintiff and her daughter in favour of Subhash, suit property was transferred in his favour. It was not disputed either that even earlier, appellant had filed civil suit No. 26/1997, titled as 'Shanit Devi and others Vs. Subhash', wherein she assailed the decree dated 7.5.1994. However, the said suit was withdrawn by the plaintiff, as the matter was compromised between the parties. Copy of the statement of plaintiff (Ex. D4) that she did not wish to pursue the suit any further as the matter was settled, was proved on record. Pursuant to the statement of plaintiff, dated 24.4.1997, as also her daughter (Shishma), vide order of an even date (Ex.D1), the said suit was dismissed as withdrawn. Although, the version of the plaintiff was that she and her daughter never filed any suit bearing No. 26/97, titled as Shanti and others Vs. Subhash, but she failed to adduce any evidence to substantiate the said plea. Further, she could always get the thumb impressions affixed upon the plaint as also power of attorney in the said suit compared with her standard thumb impressions, but she did not choose to examine any expert to disprove the case of the defendants. Therefore, the present suit filed by the plaintiffs was apparently barred.

There was yet another dimension to the controversy. Shanti Devi (PW1), conceded in her cross-examination that post death of her son (Subash), his wife and son have been living jointly with her in the same house. As indicated above, after the plaintiff suffered a decree dated

RSA No. 4357 of 2018(O&M)

4

7.5.1994, the suit property was mutated in the name of Subhash, who subsequently, vide impugned sale deeds, transferred the same to the defendants respectively. *Ex facie*, Parveen Kumari (widow of Subhash) and her children also filed a suit assailing the sale deed dated 25.4.1997, which was dismissed, vide judgment and decree dated 11.11.2009 (DW2/A). Likewise, she also filed another suit challenging the sale deed No. 1253/1, dated 17.5.1997, which too was dismissed on 19.1.2007 (Ex.DW2/D). Therefore, it could safely be presumed that Shanti Devi had due knowledge of the suits filed by widow of Subhash as also that those suits were dismissed. Thus, the only and the inevitable conclusion that could be reached: the present suit was filed only to harass the defendants.

Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. Thus, no ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

December 04, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO