

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4926 of 2018 (O&M)
Date of Decision : 26.09.2019

Ram Kumar and others

.....Appellants

Versus

Om Parkash and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Ashok Verma, Advocate for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the respondents/plaintiffs was partly decreed by the trial Court, vide judgment and decree dated 25.04.2014, and as the appeal preferred against the said decree failed and was dismissed on 01.02.2018. The appellants/defendants are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs prayed for a declaration that they and proforma defendant No.5 were owners in possession of the suit land measuring 48 kanals 2 marlas comprised in specific numbers as described in cause title of the plaint and the judgment and decree dated 03.12.1994, passed by Ms. Vivek Bharti, the then Sub Judge Ist Class, Hisar in Civil Suit No.631-C of 1994 titled “**Ram Kumar Versus Ram Kishan**” and the consequent mutation No.2273 dated 11.02.1995, was illegal and null and void. Further,

the lease deed dated 13.06.1990 and consequent entries in the record of rights were illegal, null and void and required to be rectified.

In brief, the case set out by the plaintiffs was that the suit property was originally owned and possessed by their father i.e. Ram Kishan, who died on 28.04.1992. Defendants No.1 to 4 obtained a judgment and decree dated 03.12.1994, against their father Ram Kishan by impersonation and, hence, the said decree was a result of fraud. Likewise, even the lease deed dated 13.06.1990, was a mere paper transaction.

In defense, defendants No.1 to 4 pleaded *inter alia* that Ram Kishan was owner in possession of the suit land though they denied his death for want of knowledge. The judgment and decree dated 03.12.1994, was said to be valid and rightly suffered by the deceased. As regards the lease deed it was maintained that it was duly and validly executed and was a registered document and, therefore, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Court concurrently concluded that concededly, the decree alleged to have been suffered by Ram Kishan (predecessor-in-interest of the plaintiffs and proforma defendant No.5) was passed on 03.12.1994, whereas he died on 28.04.1992, that is prior to the passing of the decree. Not just that his statement was recorded, upon which the said decree was predicated, on 22.11.1994 which shows that even before his statement was recorded Ram Kishan had already died two years ago on 28.04.1992. Hence, the said decree was a result of fraud. Ex facie Ram Kishan was impersonated and the person who appeared in Court admitted the contents of the plaint and

made statement considering the claim of the defendants. As regards execution of lease deed it was observed that it was a genuine document and was duly executed by Ram Kishan and pursuant thereto defendants No.2 to 4 were in cultivating possession of the suit property.

On being pointedly asked, learned counsel for the appellants could not point out anything from the record to show if the conclusion, recorded by both the Courts was either contrary to the record or suffered from any material illegality. Thus, no ground is made out to interfere in the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

26.09.2019

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No