

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-1065-2020 (O&M)

Date of decision: 14.07.2020

Kartaro Devi

..... Appellant

Versus

Sushil Kumari and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. BS Dhillon, Advocate for the appellant.

RAMENDRA JAIN, (ORAL)

Case has been taken up for hearing through video conferencing due to pandemic Covid-19.

Un-successful appellant-plaintiff has filed this Regular Second Appeal against the judgment and decree of lower Appellate Court dated 27.11.2019, affirming the judgment and decree of trial Court dated 16.08.2017, whereby her suit for declaration was dismissed.

Briefly, appellant-plaintiff claiming herself to be owner in possession of 3 kanals 10 marlas being 70/138th share out of land measuring 6 kanals 18 marlas, comprising Khewat/Kahtauni No. 991 min/976 min, Khasra No. 217 and land measuring 154 Sq. Yards (5-4/30

marlas) (hereinafter referred to as-'suit property') as per jamabandi for the year 1996-97, situated within the revenue estate of village Jandli, Tehsil and District Ambala, filed a suit to declare registered sale deeds No. 4738 dated 19.09.1986 allegedly executed by her in favour of respondent-defendant No. 1-Sushil Kumari and 2870 dated 01.07.1988, in favour of respondent-defendant No. 2-Arun Bala by respondent No. 1, along with mutations thereof, as illegal, null and void. Consequential relief of permanent injunction for restraining the respondents from raising any construction on the suit property was also sought.

Upon notice, defendant-respondents did not appear despite their service, thus, were proceeded *ex parte*. The appellant-plaintiff led evidence to her satisfaction. However, after hearing her through counsel, learned trial Court dismissed her suit vide *ex parte* judgment and decree dated 16.08.2017.

Being aggrieved, appellant-plaintiff approached the Ist Appellate Court, but remained un-successful as her appeal too was dismissed vide impugned judgment and decree dated 27.11.2019.

Relying upon judgments of the Apex Court in **Jatinder Singh and another (minor through mother) Vs. Mehar Singh and others**, AIR 2009 Supreme Court 354, **Malyalam Plantations Ltd. Vs. State of Kerala and another**, AIR 2011 Supreme Court 559 and of this Court in **Balwinder Singh and another Vs. Dilbag singh and others**, 2019(1) RCR (Civil) 533; **Tejbir and others Vs. Deep Chand**, 2019 (4) RCR (Civil) 351 and RSA-2585-2012, **Gram Panchayat Vs. Dalel**

and others, decided on 29.04.2016, learned counsel *inter alia* contends that judgments and decrees of both the Courts below recording concurrent findings against the appellant-plaintiff are illegal without deciding her application under Order 26 Rule 9 CPC for appointment of Local Commissioner, which is still pending adjudication. Necessary issues were required to be framed. Thus, decision of the suit of appellant-plaintiff, without adopting any such exercise, renders the impugned judgments and decrees illegal.

Having given thoughtful consideration to the submissions of learned counsel for the appellant-plaintiff, this Court finds the instant regular second appeal merits dismissal for the reasons to follow:

- (i) Regular Second Appeal can only be entertained which involves disputed questions of law, left undecided by the Courts below. In the instant appeal, learned counsel for the appellant-plaintiff has not been able to point out any such illegality or infirmity.
- (ii) Decision of the suit of appellant-plaintiff, without deciding her application under Order 26 Rule 9 CPC, does not render the impugned judgments and decrees illegal, inasmuch as, appellant-plaintiff did not lead any evidence, what to talk of authentic, cogent and convincing, to prove her title over the suit property. Therefore, there was no necessity to appoint any local commissioner.
- (iii) The appellant-plaintiff did not ever pray the Courts below to decide her application before deciding her suit or appeal. Thus, at this stage of second appeal, she cannot be permitted to raise such plea which

otherwise, shall have no material bearing on the case, without production of any document of title qua suit property by appellant-plaintiff.

(iv) Application of the appellant-plaintiff under Order 26 Rule 9 CPC, seems to be an effort to create evidence which is impermissible in law. Appellant was required to stand on her own legs and to prove her case independently by producing some documentary evidence qua her title to the suit property which she did not ever produce.

(v) She challenged the aforesaid sale deeds No. 4738 dated 19.09.1986 and 2870 dated 01.07.1988, on the basis of fraud. It is well settled proposition of law that allegations of fraud, even in civil cases, has to be proved like a criminal charge, which the appellant-plaintiff has miserably failed to do so.

(vi) Appellant-plaintiff by way of her suit filed in the year 2016 challenged the sale deeds pertaining to the years 1986 and 1988, after an inordinate delay of around 30 years. Thus, her suit was hopelessly time barred. She did not lead any evidence, as to why, she slept over the matter for such a long period.

(vii) Admittedly, there was no contest from the side of respondent-defendants to the suit of appellant-plaintiff. Therefore, there was no necessity to frame any issues, inasmuch as, suit was to be decided by taking into consideration *ex parte* evidence of the appellant-plaintiff. Thus, the plea that impugned judgments and decrees of both the Courts below are illegal and liable to be set aside for want of decision of

application under Order 26 Rule 9 CPC and non-framing of issues does not appeal to reason, when as discussed above, no such plea was ever raised by the appellant-plaintiff before both the Courts below.

No question of law, much less substantial, has been raised in this appeal. Hence, the same is held not maintainable.

Facts and circumstances of the judgments relied upon by learned counsel for the appellant are quite distinguishable from the facts of instant case, therefore, no benefit whatsoever of the same can be given to the appellant.

Dismissed.

July 14, 2020
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No