

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2301-2017(O&M)
Date of decision: 07.02.2020

Sinderpal Kaur

.....Appellant

Versus

Amarjit Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Gagan Deep Grewal, Advocate for the appellant

Ms. Sonia G Singh, Advocate for the respondents

ANIL KSHETARPAL, J.

The defendant-appellant has filed the present Regular Second Appeal against the concurrent finding of facts arrived at by the Courts below while decreeing the suit filed by the plaintiff-respondent no.1-Amarjit Kaur in the following manner:-

“29. In view of my findings on the aforesaid issues, suit of the plaintiff stands decreed with costs for declaration to the effect that the plaintiff is owner in possession of land to the extent of 5/12 share out of the land measuring 74 kanals 19 marlas fully detailed in head note of the plaint as per jamabandi for the year 1999-2000, situated at village Kotduna-A and the decree dated 29.7.2006 obtained by defendant no.1 being nullity, null and void and

having no binding upon rights of the plaintiff, is hereby set aside. The defendant no.1 is hereby restrained from alienating the land in dispute to any other person and from dispossessing the plaintiff from the land qua share of the plaintiff, illegally and forcibly, except in due course of law. Decree sheet be prepared. File be consigned to record room.”

The defendant No.1- Sinder Pal Kaur claiming to be daughter of Joginder Singh s/o Kehar Singh had filed a previous suit without impleading the plaintiff as party defendant. Sinder Pal Kaur had impleaded Mukand Singh, Nand Singh, Ram Singh sons of Dalip Singh son of Kehar Singh, Mohinder Singh s/o Kehar Singh and Bachan Singh son of Wazir Singh as defendants in the previous civil suit. However, aforesaid persons had no concern with the land in dispute as they were not owners at the time of filing of the previous suit. The defendants no. 2 to 4 in the previous suit had already sold their share to Amrit Pal, Sukhpal Singh sons of Nikka Singh. However, the purchasers were also not impleaded as defendants in the previous suit which was ex parte decreed on 29.7.2008.

The plaintiff-Amarjeet Kaur wife of Mohinder Singh has filed present suit claiming that such fraudulent decree is not binding on the rights of the plaintiff. It is undisputed that plaintiff-respondent was owner in possession of the land to the extent of 5/12th share in the joint land measuring 74 kanals 19 marlas on the date the previous suit was instituted. However, in the previous suit Sinder Pal Kaur had not only

given wrong date of death of Kehar Singh but also went on to claim that she is daughter of Joginder Singh s/o Kehar Singh.

Both the Courts of appreciation of evidence have found that Joginder Singh was never married. Kehar Singh had died on 9.9.1978 and not in the year 1970 as was being claimed by Sinder Pal Kaur in the previous suit. Therefore, Sinder Pal Kaur is not daughter of Joginder Singh. The defendant- Sinder Pal Kaur failed to prove that Joginder Singh was ever married to Surjit Kaur as was being claimed by Sinder Pal Kaur.

This Court has heard learned counsel for the parties at length and with their able assistance has gone through the judgments passed by the Courts below. Learned counsel for the appellant has submitted that the plaintiff-respondent no.1 had filed objections under Order 21 Rule 58 CPC, when execution of the previous decree dated 29.7.2006 was pending. The aforesaid objections were dismissed and therefore, no suit was maintainable.

This Court has considered the submission. Both the Courts have dealt with the aforesaid aspect. It has been noticed that no doubt objections under Order 21 Rule 58 CPC were filed by the plaintiff-respondent, however, the same were not decided on merits. The execution petition filed by Sinder Pal Kaur was consigned to records after noting that the execution stands satisfied. It is apparent from careful reading of sub rule 5 of Rule 58 of Order 21 CPC that where a claim or objection is preferred and the Court, under proviso to sub Rule 1 refuses to entertain it, the party against whom such order is made, may

institute a suit to establish the right in the property in dispute. In view thereof, there is no substance in the argument of the learned counsel for the appellant.

Keeping in view the aforesaid facts, no ground to interfere is made out. Hence, dismissed.

07.02.2020	(ANIL KSHETARPAL)
rekha	JUDGE
Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No