

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-6086-2014(O&M)

Date of decision:19.03.2020

Surjit Dass

.....Appellant

Versus

Roop Lal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.D.V.Sharma, Sr. Advocate with
Mr. Tushar Sharma, Advocate for the appellant

Mr. S.S.Tiwana, Advocate for respondents no.1 and 2

ANIL KSHETARPAL, J.

The plaintiff-appellant has filed the present Regular Second Appeal against concurrent findings of fact arrived at by the Courts below while dismissing the suit filed with following prayer:-

“It is, therefore, prayed that the suit may please be decreed with costs, passing a decree for:-

(A) declaration to the effect that the plaintiff is the owner and in possession of the land measuring 6B-1B-4B, i.e 1/20 (previously recorded in the name of defendant No.3 to 7) share of the land, comprised of Khewat No. 115, khatauni no. 213 to 221, Khasra No. 164 min (5-5), 166 (6-5), 168 min (4-10), 826/169(4-10), 828/172(4-12), 173 (4-3), 174 (3-13), 175 (3-13), 178(6-3), 830/179 (4-2), 920/821/161 (1-10), 1050/162 (0-17), 1057/163 (4-12), 164 min (3-

0), 165 min (5-15), 784/167 (3-15), 168 min(1-15), 176 (4-3), 177 (4-3), 923/180 (2-9), 824/783/167 (1-7), 1054/162 (2-7), 1056/163(3-13), 918/821/ 161(1-1), 921/180(0-19), 919/821/161(0-4), 922/180(0-5), 181 (1-5), 831/182(2-6), 170(6-5), 171(6-5), 825/169(1-15), 827/172 (1-12), 823/182 (5-0), 829/179(2-0), measuring 121B-4 Biswas situated within the revenue estate of Vill. Bhatton, Tehsil Amloh, Distt. Fatehgarh Sahib, as per jamabandi for the year 2003-04 along with all other rights appurtenant thereto.

B) declaration that the sale deed dated 9.2.2006 registration as wasiqa No.2319 in the office of Sub Registrar Amloh with regard to the land mentioned in the head note (A) of the plaint, purporting to have been executed by defendant No.3 on behalf of himself and for defendants No.4 to 7, in favour of defendant No. 1 & 2 is illegal, unlawful, inoperative, ineffective against the legal rights of the plaintiff and is without authority.

C) permanent injunction restraining the defendants themselves through their agents, servants or assignee from interfering in the peacefully possession of plaintiff over the land mentioned in the head-note (A) of the plaint.

In the considered view of this Court, short question which arises for determination is “*if an ex parte judgment and decree passed by a Court against various defendants is set aside only qua some of the defendants specifically, whether other remaining defendants who never applied for setting aside ex parte judgment and decree can claim that ex parte judgment, which has never been set aside qua them, is not binding on their rights also?*”

Harnam Dass

Surjit Dass
(plaintiff)

Satya Devi

Surjit Kaur

Mohinder Kaur

Amrik Dass

Defendant no.3

Kuldeep Kaur

Defendant no.4

Paramjit Kaur

Defendant no.5

Jasvir Dass

Defendant no.6

Dev Dass

Defendant no.7

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integrity of this document
High Court, Chandigarh

of 3/10th and 1/5th share respectively. It is the case of the plaintiff that Smt. Parmeshwari Devi and the plaintiff arrived at a family settlement and Smt. Parmeshwari Devi acknowledged plaintiff-Surjit Dass to be absolute owner of the property left behind by late Sh. Harnam Dass. However, before the revenue record could be corrected, Smt. Parmeshwari Devi died and mutation of inheritance was sanctioned with respect to the share of Smt. Parmeshwari Devi in favour of the plaintiff-Surjit Dass, Satya Devi, Surjit Kaur and heirs of late Smt. Mohinder Kaur i.e., 3 sons, 2 daughters (children of pre-deceased daughter of late Smt. Parmeshwari Devi).

Surjit Dass filed civil suit no.71 of 19.2.1986 against his two sisters i.e Satya Devi, Surjit Kaur as well as children of Smt. Mohinder Kaur (pre-deceased sister) claiming that as per family settlement he is the owner of the property left behind by Sh. Harnam Dass. In civil suit no. 71 following defendants were impleaded as party:-

- 1.Satya Devi D/o Harnam Dass, R/o Vill. Bhaton, now wife of Jit Singh son of Balak Ram of Vill. Nangalan, Tehsil Samrala, District Ludhiana.
2. Surjit Kaur D/o Harnam Dass R/o Vill. Bhaton, now wife of Sh. Jit Singh s/o Hari Dass of Vill. Lanran, Teh. Payal, Distt. Ludhiana
3. Kuldip Kaur
- 4.Paramjit Kaur
5. Jasbir Kass,
6. Dev Dass,

7. Amrik Dass,

sons/daughters of Mohinder Kaur D/o Harnam Dass,

R/o Vill. Kuhara, Teh. & Distt. Ludhiana.

The aforesaid suit was decreed vide judgment and decree dated 31.7.1997 passed by Civil Judge, First Class Amloh. It is significant to note that Satya Devi and Surjit Kaur (defendant nos. 1 and 2 in civil suit no.71) filed written statement admitting the claim of the plaintiff (Surjit Dass) whereas the defendants no.3 and 4 in the aforesaid civil suit did appear but later on absented whereas defendants no. 5 to 7 never chose to appear. On appreciation of ex parte evidence, the learned Sub Judge, First Class Amloh passed the judgment, concluding part thereof is extracted as under:-

“I hereby pass a decree for declaration in favour of the plaintiff and against the defendants that plaintiff is the sole owner and in possession of the $\frac{1}{2}$ share of land mentioned above alongwith appuretenant rights, in taur, bore, tubewell, khal, pahi, samlat, trees etc. and the defendants have no right, title, or interest in the suit land. The plaintiff is left to bear his own costs. Decree sheet be prepared accordingly.

The defendants no. 4, 5, and 7 i.e Paramjit Kaur, Jasbir Dass and Amrik Dass filed an application for setting aside ex parte judgment and decree dated 30.7.1987. The aforesaid application was allowed vide order dated 15.1.1991. Ex parte judgment and decree against the

applicants was set aside. Operative part of the order passed by the Court on 15.1.1991 is extracted

“In view of my decision in for-going issues, ex-parte decree **against the applicants** is set aside and is ordered to be restored on original number. Now the case is adjourned to 23.1.1991 for filing written statement.”

Thereafter, Paramjit Kaur, Jasbir Dass and Amrik Dass contested the suit and ultimately the Court of Additional Sub Judge, Amloh passed judgment on 27.10.1992, concluding part thereof is extracted as under

“11. As a result of my decision on the above issues, the suit of the plaintiff is bound to fail and qua the contesting defendants Nos. 4, 5 and 7. Against them the same is, therefore, dismissed. It is made clear that against the remaining defendants the ex-parte decree of the Court of Sh.M.L.Sarpal, Sub Judge, Ist Class, Amloh dt. 30.7.87 holds good. The decree sheet be drawn up likewise and thereafter, the file be consigned to the record room.”

Against the judgment and decree dated 27.10.1992, Surjit Dass-plaintiff in the previous suit as well as the present suit filed appeal which was dismissed by the First Appellate Court, concluding part whereof reads as under:-

“In view of my above discussion, the

present appeal is bound to fail and the same is hereby dismissed with costs. Counsel's fee is assessed to Rs.400/-. Decree sheet be prepared accordingly. Lower Court file be returned. This file be consigned to the record room.”

The plaintiff filed the present suit against the following defendants:-

“1) Roop Lal son of Sh. Gobind Ram son of Sh. Bhoopavi, resident of Vill. Hairpur, Tehsil Noorpur Bedi, Distt. Ropar.

2) Naresh Kumar son of Sh. Om Parkash son of Sh. Babu Ram, resident of Vill. Jindal Pur, Sub-Tehsil Bhadson, Tehsil Nabha, Distt. Patiala.

3) Amrik Dass

4) Kuldeep Kaur

5) Paramjeet Kaur

6) Jasvir Dass

7) Dev Dass

sons & daughters of Smt. Mohinder Kaur and Sh. Karam Dass, resident of Vill. Kohar, Tehsil & Distt. Ludhiana defendants No.4, 5, 6 & 7 through Sh. Amrik Dass defendant no.3 being general attorney.”

It is the case of the plaintiff that defendants no. 3 to 7 have executed a sale deed dated 9.2.2006 in favour of defendants no.1 and 2 and the same is illegal, null and void. The defendants contested the suit. Defendants no. 1 and 2 claimed that previous ex parte judgment and decree dated 30.7.1987 has been set aside and the previous suit filed by the plaintiff i.e civil suit no. 71 dated 19.2.1986 stands dismissed in entirety/completely. Therefore, defendants no. 3 to 7 have correctly sold

the property in their favour. The defendants no.3 to 7 filed separate written statements and reiterated the stand of the defendants no. 1 and 2.

Both the Courts on appreciation of evidence have dismissed the suit filed by the plaintiff while concluding that the judgment and decree dated 30.7.1987 stands set aside not only against Amrik Dass, Paramjit Kaur and Jasbir Dass but also against others namely Kuldip Kaur and Dev Dass.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the requisitioned record.

On the one hand, learned counsel for the appellant has contended that both the Courts have erred in concluding that the judgment and decree dated 30.7.1987 has been set aside with respect to all the defendants whereas on the other hand learned counsel for the respondents has contended that the Courts below have correctly passed the judgments.

On critical analysis of the arguments of the learned counsel for the parties, this Court is of the considered view that both the Courts have committed error while concluding that judgment and decree dated 30.7.1987 has been set aside in entirety/completely. As noticed above, civil suit no.71 dated 19.2.1986 was filed against as many as 7 defendants. Defendants no.1 and 2 in the aforesaid suit i.e Satya Devi and Surjit Kaur admitted the claim of the plaintiff. Thus, qua share of two sisters i.e Satya Devi and Surjit Kaur, judgment and decree dated 30.7.1987 has been passed on the basis of admission. The aforesaid two

sisters have never questioned the judgment and decree dated 30.7.1987. Hence, decree against them has become final.

Now let us examine the legal heirs of Smt. Mohinder Kaur- the third sister who had pre-deceased Smt.Parmeshwari Devi. Five heirs of Smt. Mohinder Kaur were impleaded as defendants no.3 to 7. They were proceeded against ex parte and judgment and decree dated 30.7.1987 was passed. Only Amrik Dass, Paramjit Kaur and Jasbir Dass filed an application for setting aside ex parte judgment and decree. While allowing the application and it was specifically recorded in the order dated 15.1.1991 that ex parte judgment and decree against applicants has only been set aside. Further, while passing judgment on 27.10.1992, after restoration of the suit against Paramjit Kaur, Jasbir Dass and Amrik Dass, the Court again specifically noticed that the suit is being dismissed only qua contesting defendants no.4, 5 and 7 in the aforesaid suit. It was also specifically noticed that qua the remaining defendants the ex parte judgment and decree dated 30.7.1987 would continue to hold good. No doubt, Surjit Dass filed appeal against judgment and decree dated 27.10.1982 which was dismissed on 13.11.1999, relevant extract whereof has already been extracted.

In view of the aforesaid categoric observations made by the Court at various stages, the Courts below have erred while concluding that the entire judgment and decree dated 30.7.1987 stood set aside. The conclusion is based upon misreading of the judgments and decree passed at various stages.

Learned First Appellate Court even after noticing these

facts, as noticed by this Court, concluded that since the plaintiff had filed appeal against judgment and decree dated 27.10.1992 which was dismissed therefore, the decree passed on 30.7.1987 qua the remaining defendants is also deemed to have been set aside. The conclusion of the first Appellate Court is also erroneous. There was no appeal by remaining defendants. The First Appellate Court did not exercise its power under Order 41 Rule 33 CPC. In absence of any specific observations in the appeal filed by the plaintiff, the First Appellate Court only upheld the judgment and decree dated 27.10.1992. The First Appellate Court never set aside the judgment and decree dated 30.7.1987.

Keeping in view the aforesaid discussion, the question of law is answered in favour of the appellant. It is declared that the sale deed executed by defendants no. 4 and 7, in the civil suit no.15 dated 18.3.2006, shall not be binding on the rights of the plaintiff. In other words, sale deed executed by Kuldeep Kaur and Dev Dass in favour of defendants no.1 and 2 with respect to their share out of property under heading A is declared not binding on the rights of the plaintiff. Hence, present appeal is partly allowed to the aforesaid extent.

19 .03.2020

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Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)**JUDGE**

Yes / No

Yes / No