

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-6165 of 2018 (O&M)
Date of decision: 20.02.2020

Dhanpati

... Appellant

versus

Munni & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sumit Sangwan, Advocate,
for the appellant.

ARUN MONGA, J.

1. Having been non-suited by the trial Court as well as first Appellate Court below, the plaintiff has approached this Court by filing the instant regular second appeal questioning the legality and propriety of judgments dated 15.12.2014 and 09.05.2018 respectively.

2. Plaintiff filed a suit seeking declaration that mutation No.338 and 542 dated 15.01.1951 and 11.09.1957 respectively in favour of Dayanand and Daya Chand as well as consequent sale-deed No.40 dated 18.01.1958 and mutation No.377 dated 03.12.1969 entered on the basis thereof, are null and void and not binding on the rights of the plaintiff. She being the sole legal heir of Tulsa, she is entitled to inherit her share and ought to be declared as owner in possession of 59 kanals 16-1/2 marlas being ½ share of suit land measuring 119 *kanals* 13 *marlas*. It is claimed that mutation entries in favour of Daya Nand and Daya Chand are wrong and the sale of suit property by Raj Kaur widow of Daya Chand in favour of Subh Ram, predecessor-in-interest of defendants is illegal, null and void.

3. The defendants contested the suit and claimed that they are *bonafide* purchaser of the suit land for valuable consideration. The revenue record was in favour of their vendor Raj Kaur widow of Daya Chand and after verifying the record they purchased the suit land.

4. On the basis of oral as well as documentary evidence led by the parties, the trial Court came to the conclusion that the suit filed by the plaintiff is not only hit by *resjudicata* but the same is also barred by Order 2 Rule 2. It found that in an earlier round of litigation, the sale in favour of the defendants' predecessor-in-interest was unsuccessfully challenged. The suit was dismissed vide judgment and decree dated 29.02.1960. The plaintiff concealed this fact in the subsequent suit and thus, it was held that she was precluded from raking the issue again. The appellant Court upheld the findings by observing as under:-

“12. Insofar as the principle of resjudicata is concerned, the earlier suit the judgment and decree-sheet Ex.DW5/A and Ex.DW5/B was filed by Tulsa on the ground that Tulsa, Ram Kaur widow of Dayachand conducted a kareva with Subh Ram and therefore, sale-deed no. 40 dated 16.01.1958 is illegal, null and void. In that case, the matter of succession of Inder, who died on 26.02.1950 as per death certificate Ex.P5 was not in issue either directly or substantially. This fact is clear from the issues framed in the earlier suit. In that civil suit, learned Judge concluded that sale of the disputed land by Ram Kaur in favour of Subh Ram was perfect and valid in law. Learned Civil Judge come to the aforesaid conclusion because the civil court found that Ram Kaur performed Kareva with Dayachand, thus by no stretch of imagination the plaintiff is entitled to succeed to the estate of her son, thus, the same cannot be claimed. Consequently, the findings of learned Trial Court that the suit is barred by the principle of resjudicata is correct and the same is barred by under Order 2 Rule 2 CPC is

correct.

13. *However, this court is of the considered opinion that succession of Inder(if it so open) opened on 26.02.1950 when Inder Singh died as per death certificate Ex.P5. The registered sale-deed No.40 dated 18.01.1958 was executed by Ram Kaur in favour of Subh Ram on 18.01.1958. This fact was in the knowledge of the present appellant/ plaintiff's mother Smt. Tulsa, therefore, she was required to challenge the sale-deed on the ground that she was entitled to succeed to the estate of Inder and Dyachand was not entitled to succeed to the estate of Inder, however, in earlier suit this fact was not challenged despite cause of action was available to Tulsa, Rajrup that the earlier suit was filed in the year 1959. The present appellant/ plaintiff stepped into the shoes of Tulsa and therefore, she is to be considered as a person, who is bound by the act of her predecessor Tulsa. It is clear in the facts and circumstances that Smt. Tulsa in the earlier suit was entitled to seek the relief against the respondent/ defendant Subh Ram in whose favour sale-deed no.40 dated 16.01.1958 was executed on the ground that Ram Kaur have no right in the disputed property. The very fact of which no such relief was claimed by Musma Tulsa in the earlier suit. The judgment and decree in this regard is Ex.DW5/A and Ex.DW5/B. Thus, Tulsa placed on record before the Court in the earlier suit and, therefore, the present suit i.e. second suit on the same cause of action is barred by principle of Order II Rule 2 CPC. The observations given by this Court is duly fortified by the judgments reported in 2014 (1) Civil Court Cases 653(SC); titled State Bank of India Versus Gracure Pharmaceuticals Limited and 2009(3) Law Herald(P&H) 2281 titled Surat Singh Rathee Versus Umed Singh and others.*

14. *In view of the aforesaid observaions, Tulsa was precluded to challenge sale-deed NO.40 dated 18.01.1958 in her life time, the present appellant/ plaintiff who stepped in the shoes of Tulsa is also precluded to file the present suit against*

the respondent/ defendant.”

5. In my opinion, the conclusions drawn by the learned trial Court and the learned first Appellate Court are in consonance with the record and facts of the case. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below.

6. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

7. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

8. Pending applications stand disposed of.

9. No order as to costs.

(ARUN MONGA)
JUDGE

February 20, 2020

Jiten

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No