

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.2157 of 2019 (O&M)

Reserved on 23.08.2022

Date of Decision : 30.08.2022

Smt. Santosh Devi

.....Appellant

Versus

Smt. Chameli & Ors.

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Lokesh Vohra, Advocate for the appellant.

ALKA SARIN, J.

The present regular second appeal has been preferred by the plaintiff-appellant against the judgements and decrees of both the Courts below whereby her suit for declaration and permanent injunction has been dismissed.

The plaintiff-appellant along with the present respondent Nos.6 and 7 filed a suit for declaration and permanent injunction averring that Hari Ram (husband of the plaintiff-appellant and father present respondent Nos.3 to 7) was owner of 1/8th share in the suit land and that after the death of Hari Ram the plaintiff-appellant and the present respondent Nos.3 to 7 are owners thereof. However, the defendant-respondent No.2 prepared a forged agreement to sell dated 11.04.1995 regarding 1 *Bigha* of land and then filed a civil suit (CS No.647 of 1996) for specific performance which civil suit was decreed on 09.12.2003. It was pleaded that defendant-respondent No.2 filed execution and sale deed of the suit land was got registered. It was further averred that subsequently defendant-respondent No.2 sold the suit land to defendant-respondent No.1 vide sale deed dated 11.09.2006 and mutation thereof was also recorded. Thus, the present suit was filed to

challenge the judgment and decree dated 09.12.2003 passed in CS No.647 of 1996, the orders passed in the execution proceedings, the sale deed in favour of the defendant-respondent No.2 and the sale deed in favour of defendant-respondent No.1 by alleging that Hari Ram used to remain ill and he usually resided at Ujjain in Madhya Pradesh and taking advantage of the absence of Hari Ram the civil suit and execution proceedings were filed; that Hari Ram never entered into agreement to sell with the defendant-respondent No.2 and did not receive Rs.30,000/- as earnest money; that the decree passed in CS No.647 of 1996 is based on fraud and misrepresentation.

In his written statement the defendant-respondent No.2 pleaded that Hari Ram had agreed to sell the suit land in his favour and since Hari Ram did not execute the sale deed as per the agreement to sell, the civil suit (CS No.647 of 1996) for specific performance was filed which was decreed on 09.12.2003 and in the execution proceedings the sale deed dated 01.04.2004 regarding the suit land was executed in favour of the defendant-respondent No.2. It was denied that any fraud was committed with Hari Ram and it was asserted that the judgment and decree dated 09.12.2003 were legal and valid.

In her separate written statement the defendant-respondent No.1 denied that the agreement to sell dated 11.04.1995 was a result of fraud and misrepresentation. It was stated that Hari Ram had put in appearance in the civil suit and also filed a written statement and contested the suit. However, Hari Ram failed to comply with the judgment and decree dated 09.12.2003 and as a result an execution petition was filed and sale deed was executed through Court by appointing a Local Commissioner. Defendant-respondent No.1 pleaded that she was a *bona fide* purchaser and that the suit was time

barred.

The Trial Court framed the following issues :

1. Whether the judgment and decree in civil suit No.647 of 1996 titled as Mahabir Parshad vs. Hari Ram, date of decision 09.12.2003, passed by Sh. V.P. Diwakar, Civil Judge (Sr. Divn.), Narnaul and judgment in execution petition No.36 of 23.07.2005 decided on 08.10.2005 is illegal, null and void and not binding on the rights of plaintiffs? OPP
2. Whether sale-deed No.2025 dated 11.09.2006 and sale-deed No.3 dated 01.04.2004 and mutation No.7293 is illegal, null and void and not binding on the rights of plaintiffs? OPP
3. Whether the defendant No.1 is *bona fide* purchaser? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the suit is time barred? OPD
6. Relief.

On the basis of the pleadings of the parties and the evidence produced, vide judgement and decree dated 24.02.2015 the Trial Court dismissed the suit filed by the plaintiff-appellant and the present respondent Nos.6 and 7. The Trial Court found that the plaintiffs had failed to prove that the proceedings in the earlier civil suit (CS No.647 of 1996) and execution proceedings were illegal especially when Hari Ram had contested the said

civil suit. The Trial Court also held that the present civil suit was time barred.

Aggrieved by the judgment and decree passed by the Trial Court, the plaintiff-appellant and the present respondent Nos.6 and 7 filed an appeal before the lower Appellate Court. Vide judgement and decree dated 05.07.2018 the lower Appellate Court dismissed the appeal. Hence, the present regular second appeal by the plaintiff-appellant. The present respondent Nos.6 and 7, who were co-plaintiffs, have not come forward to challenge the judgement and decree passed by the lower Appellate Court.

Learned counsel for the plaintiff-appellant has contended that the Courts below have erred in dismissing the suit for declaration and permanent injunction. As per counsel, the evidence on the record proved that Hari Ram had been defrauded and duped by the defendant-respondent No.2. It is further contended that Hari Ram used to spend his time in Madhya Pradesh and the defendant-respondent No.2 had taken advantage of this fact to cheat him.

Heard.

The counsel for the plaintiff-appellant has been unable to satisfy this Court as to how the plaintiff-appellant along with the co-plaintiffs i.e. present respondent Nos.6 and 7 could challenge the judgment and decree dated 09.12.2003 when it was clear from the evidence on the record that Hari Ram had contested the said suit but had been unsuccessful in defending the same. The lower Appellate Court has found that :

“13. Ex.P1 is the certified copy of judgment titled as Mahabir Prasad vs. Hari Ram decided on 9.12.2003.

After going through the said judgment Ex.P1 it is clear

that Hari Ram, who was defendant in the said case, fully contested the said case. Sh. S.K. Sanghi Advocate appeared on his behalf. After going through Ex.P1 it is also clear that defendant filed written statement and he denied having entered into an agreement to sell dated 11.4.1995. After going through Ex.P1 it is also clear that several witnesses were examined by Mahabir Prasad to prove the agreement to sell. As the case titled as Mahabir Prasad vs. Hari Ram was fully contested by Hari Ram and in these circumstances now plaintiffs who are legal heirs of Hari Ram have got no locus standi to challenge the said judgment and decree dated 9.12.2003. Even otherwise, plaintiffs failed to show that any fraud was played with Hari Ram. Even otherwise, the judgment Ex.P1 dated 9.12.2003 has become final between the parties i.e. Mahabir Prasad and Hari Ram and therefore, merely on the ground that no notice was given to the defendant Hari Ram regarding execution petition is not sufficient to discard the judgment Ex.P1 and decree Ex.P2. As Hari Ram has not got registered the sale deed as per the judgment and decree dated 9.12.2003 and due to that reason the sale deed was got registered by appointing local commission by the executing court. As such there is no illegality or infirmity in the judgment of the learned lower court and there was no need to give notice to Hari Ram regarding

execution petition.

14. Defendant no.1 purchased the suit land from defendant no.2 and as defendant no.2 was owner of the suit land at that time, therefore, defendant no.1 is certainly bona fide purchaser. There is no illegality or infirmity in the judgment passed by learned lower court and therefore, finding of trial court on all the issues are hereby affirmed.”

Though the counsel for the plaintiff-appellant vehemently contended that the judgments and decrees of the Courts below are against the record, he could not point to any cogent and convincing evidence which had been mis-read by the Courts below. No other argument has been raised by learned counsel for the plaintiff-appellant. No question of law, much less any substantial question of law, arises for determination in the present case.

In view of the discussion above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The present regular second appeal is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

30.08.2022
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO