

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2760 of 2013 (O&M)

Date of Decision: 06.07.2022

Om Parkash and Others

... Appellant(s)

Versus

Manohar and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Rakesh Nehra, Senior Advocate
with Mr. Dalip Tuteja, Advocate
for the appellant(s).

Mr. Aditya Jain, Advocate
for the respondents.

Anil Kshetarpal, J.

1. The defendants have filed the present appeal assailing the concurrent findings of facts arrived at by both the Courts below.
2. The plaintiffs (respondents herein) filed a suit for grant of decree of declaration with a consequential relief of permanent injunction. It is the case of the plaintiffs that they are settled in village Kakraula since its foundation and the land is situated in lal dora of the village. The plaintiffs claim to be owner in possession of the property being non-proprietors. They claim that the predecessor-in-interest of the defendants, in collusion with the Gram Panchayat, obtained the judgment and decree dated 06.10.1990 which should be declared null and void. The Gram Panchayat did not contest the suit whereas the defendants (appellants herein) contested the suit claiming that a valid decree was passed in the year 1990 and the suit is barred by time.

They also claim to be in possession of the suit property since a long time. The trial Court decreed the suit after finding that the judgment and decree dated 06.10.1990 was procured by the predecessor-in-interest of the defendants in collusion with the then Sarpanch of the village. It was found that the Sarpanch conceded to the claim of the predecessor-in-interest of the defendants resulting in the decree. The aforesaid finding has been affirmed by the First Appellate Court. The trial Court also declared the plaintiffs to be owners in possession of the suit property but this finding has been reversed by the First Appellate Court.

3. Heard the learned counsel representing the parties and with their able assistance, perused the the paper-book.

4. The learned counsel representing the appellants, with all vehemence at his command, submits that the plaintiffs have no right, title or interest in the property, therefore, they have no locus standi to challenge the judgment and decree dated 06.10.1990. He further submits that the appellants are in possession of the property for the last 70 years.

5. Per contra, the learned counsel representing the plaintiffs contends that the judgment and decree is, on the face of it, a result of collusion. He submits that the Sarpanch had no authority to admit the claim of the predecessor-in-interest of the defendants without enabling resolution of the multi member body, with prior permission of the government, in this regard. He submits that the plaintiffs, being residents of the village, have locus to file the suit particularly when a fraud has been played by the defendants.

6. The facts of the case clearly show that late Chunni Lal obtained

with the then Sarpanch of the Gram Panchayat. Such decree, being nullity, has no force of law. The plaintiffs were not a party to the previous decree and the same is a decree in personam. Hence, it is not binding on the rights of the plaintiffs or any other respondent. The First Appellate Court has not granted any declaration in favour of the plaintiffs qua their ownership. In these circumstances, in substance, the Court has only declared the decree, which was obtained from the Court in collusion with the Sarpanch of the Gram Panchayat, as nullity.

7. Keeping in view the aforesaid facts, no ground is made out to interfere. Consequently, the present appeal is dismissed.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 06, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No