

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.3932 of 2018 (O&M)

Reserved on : 14.11.2022

Date of Decision: 30.11.2022

Banwari Lal (deceased) through LRs & Others

....Appellants

VERSUS

Smt. Mayawati & Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sharad Mehra, Advocate for the appellants.

ALKA SARIN, J.

The present appeal has been preferred by the defendant-appellants against the impugned judgments and decrees dated 23.04.2013 and 10.01.2018 passed by the Trial Court and the lower Appellate Court respectively.

The brief facts relevant to the present *lis* are that the plaintiff-respondents filed a suit for permanent injunction for restraining the defendant-appellants from interfering in their peaceful possession over the suit property bearing Municipal no.2156/13 corresponding with 1036/25 corresponding with new Khanashumari no 1036/17 situated in the area of Old Karkhana Shekhan, Lohgarh Gate, Amritsar in any manner and from forcibly dispossessing the plaintiff-respondents from the suit property and from raising any construction in the suit property. It was averred that originally Jangli Ram (father-in-law of plaintiff-respondent no.1 and grandfather of plaintiff-respondent no.2) was the owner of the suit property and he resided there along with the plaintiff-respondents and his son Ram Saran. During the life time of Jangli Ram, a family settlement was effected and he distributed his property to his sons Ram Saran and Banwari Lal

(original defendant no.1). As per the said family settlement, the portion shown in green colour in the site plan fell to share of Ram Saran while the portion shown in yellow colour in the site plan came to the share of Banwari Lal. It was further averred that since the date of the family settlement the plaintiff-respondents are in peaceful possession of the portion which is shown in green colour in the site plan and the defendant-appellants are in possession of the portion which is shown in yellow colour in the site plan and that the defendant-appellants have got no concern with the portion which is shown in green colour in the site plan. As per the plaintiff-respondents, the dispute between the parties is regarding possession of the said green portion only and in the month of July-August 2005 the building had collapsed due to heavy rainfall and then the defendant-appellants threatened to raise construction over the suit property. Hence, the suit.

On notice, the defendant-appellants filed their written statement raising some preliminary objections. On merits it was denied that the plaintiff-respondents or Ram Saran ever came into possession over the suit property and rather Banwari Lal (original defendant no.1) was taking care of his father Jangli Ram since his childhood and Jangli Ram was residing with him till his death. It was pleaded that the alleged family settlement was never effected by Jangli Ram, who was illiterate, and that the alleged family settlement was result of fraud and misrepresentation. It was alleged that the plaintiff-respondents intended to take forcible possession of the suit property under the garb of the alleged family settlement. It was further pleaded that Jangli Ram had executed a valid registered Will dated 28.10.1988 in favour of Vinod Kumar, his grandson defendant-appellant no.2, regarding his property including the suit property and, as such, the defendant-appellant

no.2 has become the owner of the suit property after the death of Jangli Ram. It was stated that defendant-appellant no.2 and his family members are in possession of the suit property.

The plaintiff-respondents filed a replication reiterating the stand taken in the plaint.

On the basis of the pleadings of the parties the followings issues were framed :

1. Whether Jangli Ram made a family settlement for distribution of his property as alleged ? OPP
2. Whether as per family settlement, back portion of the suit property was given to the plaintiffs, who are in possession of the same ? OPP
3. Whether the plaintiffs are entitled to permanent injunction as prayed for ? OPP
4. Whether the family settlement as alleged by the plaintiff is result of fraud and misrepresentation ? OPD
5. Whether the suit is barred and liable to be dismissed ? OPD
6. Whether the present suit is not maintainable ? OPD
7. Relief.

Vide judgement and decree dated 23.04.2013 the Trial Court, based on the pleadings of the parties and the evidence on the record, decreed the suit of the plaintiff-respondents holding that the family settlement stood proved as also the possession of the plaintiff-respondents over the suit property. Aggrieved by the said judgment and decree, an appeal was

preferred by the defendant-appellants along with an application for production of additional evidence. Both the appeal and the application were dismissed vide judgment and decree dated 10.01.2018. Hence, the present regular second appeal.

It is argued by learned counsel for the defendant-appellants that the Courts below have erred in decreeing the suit of the plaintiff-respondents. According to counsel the family settlement propounded by the plaintiff-respondents was a result of fraud and misrepresentation. It is contended that Jangli Ram had executed a valid registered Will in favour of his grandson, defendant-appellant no2, who had become owner of the suit property after the death of Jangli Ram and was in possession thereof and therefore the suit for injunction filed by the plaintiff-respondents should have been dismissed.

I have heard learned counsel for the defendant-appellants.

The contention of the defendant-appellants is that the family settlement set-up by the plaintiff-respondents is not a genuine document but a result of fraud and misrepresentation. However, apart from making bald averments about fraud and misrepresentation, the defendant-appellants have not pleaded or proved the existence of any fraud by the plaintiff-respondents. No doubt fraud vitiates everything inasmuch as it affects the very solemnity of the proceedings, however, by now it is the settled law that fraud has to be pleaded and established by leading cogent evidence. An ambiguous statement cannot *per se* make a document fraudulent. It is trite that a person raising the plea of fraud needs to plead and prove its ingredients. In the present case, both the pleadings and the proof are woefully missing. As per the settled proposition of law, mere mentioning

and using the word fraud/fraudulent is not sufficient to satisfy the test of fraud. Using the word fraud/fraudulent without any material particulars would not tantamount to pleading of fraud. In **Bishundeo Narain and Another vs. Seogeni Rai [AIR 1951 SC 280]** it was inter-alia held that *“It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion”*.

Regarding the Will having been executed by Jangli Ram and defendant-appellant no.2 becoming owner of the suit property after his death, it is to be noted that the present suit is one of permanent injunction only. A suit for injunction simpliciter is concerned only with possession and normally the issue of title will not be directly and substantially in issue. The prayer for injunction has to be decided with reference to the finding on possession. It is settled law that in a suit for injunction the questions of fact and law relating to title will not be decided and the Court will relegate the parties to the remedy by way of a comprehensive suit for declaration of title instead of deciding the issue in a suit for mere injunction. As far as possession of the plaintiff-respondents over the suit property is concerned, the lower Appellate Court found that

“Banwari Lal while appearing in the witness box as DW4 admitted in his testimony that property of Hira

Lal, Ram Saran and himself was separated during the life-time of his father Jangli Ram. DW4 Banwari Lal also admitted that Hira Lal and Ram Saran (Lal) constructed their separate shares from their own funds. Even his son Vinod Kumar, while appearing in the witness box as DW3 admitted that Hira Lal, Ram Saran and Banwari Lal were having separate possession out of the property of Jangli Ram. It means that DW3 and DW4 admitted that during his life-time, Jangli Ram gave separate portions out of his property to his three sons namely Hira Lal, Ram Saran and Banwari Lal. DW3 admitted in his testimony that while entering in the street, first comes his house, then there is house of Ram Saran and then after turning towards left, there is house of Hira Lal. He also admitted that Jangli Ram was the exclusive owner of the abovesaid three properties. DW4 stated that his house comes first in the street before reaching the disputed property. He also admitted that the house of Hira Lal is on the front side of the suit property. Both DW3 and DW4 admitted that neither any door nor any window of their house opens towards the suit property. DW4 admitted in his testimony that the area under his occupation is less than the area shown in green colour in the site plan Ex.DZ, which is in occupation of the respondents/plaintiffs. DW3 Vinod Kumar son of Banwari Lal also admitted in his testimony that abovesaid green portion shown in site plan Ex.DZ is in occupation of the respondents/plaintiffs and the dispute is only regarding the said green portion. So, it is proved on the record that during his life-time, Jangli Ram partitioned his property orally in three portions and gave them to his three sons namely Hira Lal, Banwari Lal and Ram Saran and since then, the said three sons/their legal heirs are in peaceful

possession of their respective shares. DW3 and DW4 have admitted in their testimony that Ram Saran/his L.Rs are occupying the suit property, which is shown in green colour in the site plan Ex.DZ. So, it stands fully proved that at the time of filing of the suit, the respondents were in lawful possession of the suit property”.

Thus, the possession of the plaintiff-appellants over the suit property having been established, their suit for permanent injunction has rightly been decreed by the Courts below. No other point has been argued.

In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less any substantial question of law, arises for determination in the present case. The present regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

30.11.2022
Jk

(ALKA SARIN)
JUDGE

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