[110] IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2833-2019
Date of Decision :03.03.2023

Sahil and others …Appellants

versus

S.K. Gupta ….Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Dhruv Mittal, Advocate for the appellants.

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B.S. Walia, J. (Oral)

[1] Challenge in the instant regular second appeal is to the dismissal of Civil Appeal No.705 of 2017 by the learned Addl. District Judge, Mewat vide judgment and decree dated 23.01.2019, while upholding the judgment and decree dated 02.09.2016 passed by the learned Addl. Civil Judge (Senior Division), Mewat whereby, the suit filed by the appellants-plaintiffs for declaration with consequential relief of joint possession was dismissed.

[2] Learned counsel contends that the appellants-plaintiffs, who were minors, had filed a suit through their mother as natural guardian that their deceased-father-Yusuf, was joint owner in possession of agricultural land bearing Khewat No.5/7, 6/8, 7/9, 8/10, Khasra No.15, Killa No.2/1(5-16), Khasra No.11, Killa No.13(8-0), 18(8-0), 23/3(4-0), 23/2(2-0), 23/1(2-0) and Khasra No.10, Killa No.22(8-0) total measuring 37 kanal 16 marla to the extent of 1/3rd share which works out to 12 kanals 12 marlas situated within the revenue estate of Village Badelaki, Tehsil Nuh, District Mewat (hereinafter referred to as 'suit land') and that the said land was ancestral and that a month prior to the filing of the civil suit, it had come

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to their notice that sale deed dated 15.02.2012 had been executed by their deceased-father in favour of the respondent-defendant after he had suffered a collusive decree dated 30.10.2006 in favour of the defendant on the basis of a false, collusive and illegal agreement to sell.

[3] The learned trial Court dismissed the civil suit on the ground that the appellants-plaintiffs had failed to make out even a *prima facie* case in their favour.Appeal filed by the appellants-plaintiffs was dismissed by the learned Addl. District Judge, Mewat vide judgment and decree dated 23.01.2019 in Civil Appeal No.705 of 2017.

[4] On the basis of submissions made by learned counsel for the appellants, learned lower Appellate Court framed the following points for consideration:-

1) Whether any fraud played in getting the judgment and decree dated 30.10.2006?
2) Whether the suit filed by the defendant against the father of the plaintiffs was collusive?
3) Whether the suit is barred by law by challenging the judgment and decree dated 30.10.2006 in 2012?

[5] Learned Appellate Court while considering whether any fraud was played in getting collusive judgment and decree dated 30.10.2006 held that no doubt civil suit filed by the respondent-defendant titled as '*S.K. Gupta versus Yusuf*' filed in the year 1998 was hotly contested by the father of the appellants-plaintiffs whotried to prove that he had not executed agreement to sell by examining DW2-Naresh Kumar Katariya, Handwriting and Fingerprint Expert and also appeared himself as DW1 besides regular second appeal having been filed by the appellants-plaintiffs father-Yusuf, the decision of the Courts below in the

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aforementioned civil suit was upheld.

[6] The learned Appellate Court held that no material, pleading or evidence had been produced on the record to show that the appellants-plaintiffs father colluded with the respondent-defendant and also that Civil Suit titled as '*S.K. Gupta versus Yusuf*' was contested and decided vide judgment and decree dated 30.10.2006 passed by the learned trial Court.

[7] Appeal against the same as well as regular second appeal No.2975 of 2008 filed by Yusuf against the judgment and decree of the trial Court is stated by learned counsel for the appellant to have been dismissed by the High Court vide judgment dated 06.01.2009 whereafter the Civil Court got registered the sale deed in favour of S.K. Gupta.

[8] Learned counsel for the appellants states that no challenge was filed to the judgment and decree dated 06.01.2009 in RSA No.2975 of 2008 in case titled as '*Yusuf versus S.K. Gupta*' as subsequent to the decision of the High Court, Yusuf died on 06.11.2009.

[9] Despite query, learned counsel for the appellants has not been able to refer to any material or evidence to substantiate the plea of fraud and collusion by the father of the appellants-plaintiffs leading to the passing of decree in civil suit in case titled as '*S.K. Gupta versus Yusuf*', nor has learned counsel for the appellants been able to point out any evidence on the record to show that the suit land was ancestral and that as per *Meo* custom, the deceased father of the appellants-plaintiffs had no right to sell the land without consideration or legal necessity.

[10] Faced with the aforementioned position, learned counsel states that he does not press the instant appeal but reserves his right to challenge decision dated 06.01.2009 in RSA No.2975 of 2008 in case

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tilted as '*Yusuf versus S.K. Gupta*' by way of appropriate proceedings in accordance with law.

[11] In view of the position noted above, as well as statement of learned counsel for the appellants, the judgment and decree of the Courts below does not warrant any interference. No substantial question of law much less question of law arises for consideration. Resultantly, the appeal is *dismissed as such* with the liberty as prayed for.

(B.S. Walia)
Judge

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Whether speaking/ reasoned : Yes/No
Whether reportable : Yes/No

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