

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.4263 of 2004

Reserved on : 15.12.2022

Date of Decision : 10.01.2023

Savitri Devi

....Appellant

VERSUS

Dharam Pal and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. A.P. Bhandari, Advocate for the appellant.

Mr. Yagsimant Attri, Advocate for respondent nos.1 and 2.

ALKA SARIN, J.

The present appeal has been preferred by the defendant No.2-appellant against the impugned judgements and decrees dated 05.04.2001 and 24.08.2004 passed by the Trial Court and the lower Appellate Court, respectively, decreeing the suit for declaration filed by the plaintiff-respondent Nos.1 and 2.

The brief facts relevant to the present *lis* are that defendant No.1 (proforma respondent No.3 herein) was owner of land measuring 15 kanals 19 marlas and land measuring 115 kanals comprised in Khewat No.504 min Khatauni Nos.600, 601 min, 602 min, 603 min situated in the revenue estate of village Balu, Tehsil Kalayat, District Kaithal. He is stated to have sold the suit land in favour of the plaintiff-respondent Nos.1 and 2 vide registered sale deed dated 27.05.1993 for a sale consideration of Rs.1,72,000/-. The defendant No.2-appellant filed a collusive suit no.90/94 titled 'Savitri vs. Sita Ram' in the Court of Sub Judge, Kaithal for declaration to the effect that she was owner of land measuring 30 kanals 10 marlas out of the land measuring 115 kanals 01 marlas. In this suit the defendant therein (proforma respondent No.3 herein) filed an admission

written statement and on the basis of said admitted written statement the suit was decreed on 08.02.1994. The subject matter of the said suit i.e. land measuring 30 kanals 10 marlas included the land measuring 15 kanals 19 marlas which is stated to have been sold to the plaintiff-respondent Nos.1 and 2 vide registered sale deed dated 27.05.1993. The present suit was filed by the plaintiff-respondent Nos.1 and 2 for a declaration that the decree dated 08.02.1994 was null and void and not binding on the rights of the plaintiff-respondent Nos.1 and 2 as defendant No.1 (proforma respondent No.3 herein) was not owner of the suit land on the date of decree dated 08.02.1994 and, as such, he could not have suffered a consent decree in favour of his wife. The defendant No.1 (proforma respondent No.3 herein) was proceeded against ex parte. Written statement was filed by the defendant No.2-appellant wherein it was averred that a suit simpliciter for declaration was not maintainable as no relief of possession was sought and the plaintiff-respondent Nos.1 and 2 were not in possession of the suit land. It was further averred that the suit was liable to be stayed as an earlier suit titled 'Ishwar etc. vs. Sita Ram etc.' was already pending regarding the same subject matter. It was further averred that the land was ancestral in nature and that the sale was without any legal necessity and that the sale deed was null and void and not binding on the rights of the defendant No.2-appellant and her sons.

On the basis of pleadings of the parties the following issues were framed by the Trial Court :

1. Whether the decree dated 08.02.1994 passed in civil suit no.90/94 re; Savitri Devi vs. Sita by Sh. H.S. Thakur, the then learned Sub Judge, Ist Class, Kaithal is

null and void as alleged by the plaintiff in para no.6 of the plaintiff? If so what effect ? OPP

2. Whether the suit is not maintainable ? OPD

3. Whether the defendant is in possession of the suit land and suit for declaration simpliciter does not lie ? OPD

4. Whether the principle of res judicata applies to this case as an earlier suit titled as Ishwar etc. vs. Sita Ram etc. is already pending before the court of Sh. J.S. Jangra, Id. Civil Judge (Sr.Division), Kaithal ? OPD

5. Relief.

Subsequently, following the additional issues were framed :

5. Whether the suit property is ancestral/coparcenary property as alleged ? OPD

6. If issue no.5 is proved whether the sale in favour of plaintiff is for legal necessity ? OPD

7. Relief.

Again the following additional issue was framed :

3-A. Whether the suit land was got redeemed by Sita Ram after paying mortgage money and the possession is with the mortgagee as alleged ? OPD

The Trial Court held that the suit property was not ancestral in nature and that vide sale deed dated 27.05.1993 (Ex.P1), the land measuring 15 kanals 19 marlas stood sold to the plaintiff-respondent Nos.1 and 2. The suit was accordingly decreed vide judgment and decree dated 05.04.2001.

Aggrieved by the said judgment and decree, an appeal was preferred by the

defendant No.2-appellant which was also dismissed vide judgment and decree dated 24.08.2004. Hence, the present regular second appeal.

Learned counsel for the defendant No.2-appellant would contend that a suit for declaration was not maintainable as the plaintiff-respondent Nos.1 and 2 were not in possession of the suit land and no relief of possession had been sought. It is further the contention that the revenue documents clearly show that the defendant No.2-appellant was in possession. Learned counsel for the defendant No.2-appellant would further contend that the suit land is ancestral in nature and the same was transferred without any legal necessity. It is further contended that the plaintiff-respondent Nos.1 and 2 did not press issue no.5 and hence issue no.5 ought not to have been decided by the Trial Court in their favour.

Per contra learned counsel for the plaintiff-respondent Nos.1 and 2 has contended that they were in possession of the suit land inasmuch as the suit land was got redeemed by them and the mortgagees had handed over possession of the suit land to plaintiff-respondent Nos.1 and 2. It is further the contention that in the sale deed itself there was a recital that possession of the suit land had been handed over to the plaintiff-respondent Nos.1 and 2.

I have heard learned counsel for the parties.

In the present case the plaintiff-respondent Nos.1 and 2 had approached the Court averring in their plaint that defendant No.1 (proforma respondent No.3 herein) had sold the suit land in their favour vide registered sale deed dated 27.05.1993. Consideration for the said suit land was Rs.1,72,000/- out of which Rs.60,000/- was paid as earnest money and Rs.1,00,000/- was to be paid to the mortgagee since the land was under mortgage. The remaining amount of Rs.12,000/- was to be paid before the

Sub-Registrar. Vide the registered sale deed dated 27.05.1993 the land measuring 15 kanals 12 marlas was sold in favour of plaintiff-respondent Nos.1 and 2. Admittedly, defendant No.1 (proforma respondent No.3 herein) was owner of the land measuring 115 kanals 08 marlas situated in village Balu, Tehsil Kalayat District Kaithal. As per jamabandis placed on the record for the year 1989-90, qua Rect. No.27 Killa Nos.7, 14, the names of Sita son of Sheo Nath has been recorded in the capacity of mortgagor and the names of Smt. Junni, Gurnami, Choto, Ramesh and Satbir have been recorded in the capacity of mortgagees. A perusal of the judgments and decrees passed by both the Courts below reveals that no revenue documents prior to 1989-90 have been placed on the record which would show the ancestral nature of the suit property. In fact, learned counsel for the defendant No.2-appellant has been unable to point out to any document on the record to show that the suit property was ancestral in nature. The argument raised by learned counsel for the defendant No.2-appellant that since issue no.5 was not pressed by the plaintiff-respondent Nos.1 and 2 and hence ought not to have been decided in their favour by the Trial Court cannot be accepted for the reasons, firstly, the onus of the issue was on the defendants; and secondly, even if the issue was treated as not pressed, the same in any case would have been decided against the defendants. However, the Courts below in their wisdom dealt with issue no.5 since the issue in hand was whether the sale deed executed in favour of the plaintiff-respondent nos.1 and 2 on 27.05.1993 could have been executed by defendant No.1 (proforma respondent No.3 herein). Learned counsel for the defendant No.2-appellant has not been able to show any case law in support of his argument that in case an issue is not pressed the Court is debarred from returning a finding on the said issue. Dealing with the next argument of

learned counsel for the defendant No.2-appellant that the suit itself was not maintainable since possession was not sought also deserves to be rejected on the ground that in the registered sale deed dated 27.05.1993 there was a recital that the land stood mortgaged and Rs.1,00,000/- out of the sale consideration was to be paid to the mortgagees to get the land redeemed. The plaintiff-respondent No.1 himself stepped into witness-box as PW3 and testified that they got the land redeemed after making payment of Rs.1,00,000/- as per terms and conditions of the sale deed. The plaintiff-respondent Nos.1 and 2 also examined Arjun Singh, who is the witness to the writing dated 05.06.1993 (Ex.D8) which was reduced into writing to get the land redeemed, and he deposed that Baldev Singh (plaintiff-respondent No.2) had paid Rs.1,00,000/- to get the land redeemed and the same was reduced into writing (Ex.D8). The original mortgage deed was also produced on the record. In Ex.D8 it had been mentioned that possession was delivered to the owners. Learned counsel appearing on behalf of the defendant No.2-appellant has laid much stress on the fact that there is a recital in Ex.D8 that possession of the land was delivered to the owners and that the defendant No.2-appellant was the owner and that being so the a simpliciter suit for declaration was not maintainable. A conjoint reading of the sale deed as well as Ex.D8 leaves no manner of doubt that the possession was delivered to the plaintiff-respondent Nos.1 and 2.

In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. The concurrent findings of fact recorded by both the Courts below do not warrant any interference by this Court. No question of law, much less substantial question of law, arises in the present appeal which is wholly devoid of any

merits and is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

10.01.2023
jk

(ALKA SARIN)
JUDGE

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