

Labh Singh

....Appellant

versus

Sukhdev Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Dinesh Kumar, Advocate for appellant.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, appellant-plaintiff is in second appeal before this Court assailing learned trial Court judgment and decree dated 24.04.2017, as upheld by learned First Appellate Court vide its judgment and decree dated 04.05.2019, dismissing the suit filed by appellant seeking declaration and permanent injunction.

3. Briefly stated, facts, as noticed by learned Courts are as below.

3.1 Surjit Kaur widow of Sucha Singh, who was previously owner in possession to the extent of 1/9 share in the suit land, had four sons, namely, Labh Singh (plaintiff), Sukhdev Singh (defendant no.1), Darshan Singh (defendant no.2), Joginder Singh (proforma defendant no.3) and two daughters, namely, Sinder Kaur (proforma defendant no.4) and Balbir Kaur. Said Surjit Kaur never suffered any decree and judgment *qua* her share in suit land in favour of defendants No.1 and 2. Alleged decree and judgment dated 09.01.1998 passed by learned Civil Judge (Jr. Divn.), Sunam, in Civil Suit No.544 of 29.10.1997 titled as 'Sukhdev Singh and another Vs. Surjit Kaur' qua her 1/9th share out of above said

total land, was illegal, null and void, forged and fictitious document which had no effect upon her rights and same was liable to be set aside. No alleged family settlement took place in the family. The said judgment dated 09.01.1998 along with mutation No.11224 sanctioned on the basis thereof, were liable to be set aside as same are illegal, null and void against law and facts and did not confer any right or title on the defendants No.1 and 2. The revenue records were also wrong and liable to be corrected accordingly. Further defendant no.1 and 2 threatened to alienate suit land on the basis of wrong revenue record forcibly and illegally. Despite their repeated requests to defendants to admit plaintiff's claim, defendants did not pay any heed nor ceased their threats.

4. Upon notice, defendants appeared and filed written statements. It was counter averred that judgment and decree dated 09.01.1998 were passed by Competent Court when present plaintiff himself admitted averments of said suit by suffering a statement before court on 09.01.1998. He also admitted family settlement between them and Surjit Kaur deceased. Surjit Kaur had also suffered a similar statement before said Court on 08.01.1998 and accordingly, said suit was decreed on 09.01.1998 in favour of Sukhdev Singh and others. Once plaintiff himself admitted contents of plaint of Civil suit No.544 dated 29.10.1997, he could not be allowed to challenge its validity after a huge time gap of approximately 18 years. Hence no declaration as well as injunction, as sought by plaintiff, could be granted in favour of plaintiff. With these averments, defendants prayed for dismissal of suit with costs.

5. Based on the rival pleadings, following issues were framed:

- “1. *Whether plaintiff is entitled for declaration as prayed for? OPP*
2. *Whether plaintiff is entitled for permanent injunction as prayed for? OPP*
3. *Whether plaintiff has no locus standi to file the present suit? OPD*
4. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*

5. *Whether the plaintiff has concealed the material facts from the Court and do not come to court with clean hands? OPD*
6. *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issues No.1 to 5 against plaintiff and in favour of defendants. Consequently, suit of plaintiff was dismissed, vide impugned judgment and decree dated 24.04.2017.

8. Feeling aggrieved against the said judgment and decree dated 24.04.2017, appellant-plaintiff preferred first appeal.

9. Learned First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

10. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“17. *The plaintiff has filed the suit for declaration and permanent injunction by challenging the decree and Judgment dated 09.01.1998 passed by the Court of learned Civil Judge (Jr.Divn.), Sunam in Civil suit no.544 of 29.10.1997 on the allegation that same is illegal, null and void. It is clear from the Judgment and decree dated 09.01.1998 Ex.P1 and Ex.P2 passed by the learned Lower Court on 09.01.1998 in Civil suit No.544 of 29.10.1997, on the basis of admission of the facts made by Surjit Kaur (defendant in previous suit) and Labh Singh (the plaintiff in the present suit). The plaintiff has stated that Surjit Kaur has never suffered any decree with regard to her share in favour of Sukhdev Singh etc., but the Judgment and decree dated 09.01.1998 as well as the statements of Labh Singh and Surjit Kaur Ex.D1 and Ex.D6, falsify his claim in the present suit.*

“As per Section 44 of the Indian Evidence Act “Fraud or collusion in obtaining judgment, or in competency of Court, may be proved:-

Any party to a suit or other proceedings may show that any judgment, order or decree which is relevant under section 40,41 or 42 and which has been proved by the adverse party was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.”

18. *In the present case, Judgment and decree under challenged dated 09.01.1998 were passed by the Court on the basis of admission made by the defendant and a judgment and decree passed*

on the basis of admission cannot be set aside on the ground of fraud. Surjit Kaur during her life time has never challenged the said decree. Both defendants no.1 and 2 have stated in their cross-examination that suit property was not the Joint Hindu Coparcenary property. So it is not proved that Judgment and decree dated 09.01.1998 suffered by Surjit Kaur is a result of fraud. In view of above discussion, there is no ground to interfere in the well reasoned Judgment passed by the learned Lower Court. The learned Lower Court has rightly dismissed the case of the plaintiff. As such findings rendered by the learned Lower Court on issue no.1 to 5 is upheld.”

11. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record.

12. Having perused the impugned judgments, my considered opinion is that the submissions made before learned Courts below were duly considered and repelled and the concurrent findings of fact recorded by the two Courts below were correctly recorded by giving sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

12.1 No new arguments have been raised other than reiteration of the stand taken before the courts below.

13. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

14. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

15. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate

RSA-4511-2019 (O&M)

jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

16. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

17. Pending application(s), if any, shall also stand disposed of.

18. No order as to costs.

(ARUN MONGA)
JUDGE

March 13, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No