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2023:PHHC:046444

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA NO. 976 of 2019 (O&M)
DATE OF DECISION: 27.03.2023**

Ramesh

...Appellant

Versus

Maha Dev and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Babbar Bhan, Advocate for
Mr. Naveen S. Bhardwaj, Advocate
For the appellant.

ARUN MONGA, J. (ORAL)

CM-2229-C-2019

For the reasons stated in application, same is allowed and delay of 260 days in re-filing the appeal is condoned, subject to all just exceptions.

MAIN CASE

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

2. Instant appeal is against judgment and decree dated 29.08.2014 passed by learned Additional Civil Judge (Senior Division), Loharu, vide which suit filed by plaintiff/respondent No.1 herein, for declaration and permanent injunction was decreed with costs, as affirmed by learned Additional District Judge, Bhiwani, vide judgment and decree dated 27.10.2017.

3. Briefly stated, facts as noticed by Courts below are that plaintiff (respondent No.1 herein) filed a suit for declaration and permanent injunction claiming himself as owner in possession of 1/3rd share of total land measuring 24 Kanals 11 Marlas on the basis of judgment and decree dated 23.10.1982 passed by then Sub Judge First Class, Bhiwani. Defendants No.1 to 3 were having 1/12th share in equal shares whereas defendants No.4 to 6 were having 1/4th share in equal shares and defendant No.7 was owner in possession of remaining 1/3rd share over the land in dispute.

3.1. Further, on the basis of aforesaid judgment and decree, mutation bearing No.1974 sanctioned on 30.07.1983 along with another mutation No.70 sanctioned on 30.09.2008 *qua* inheritance of Sukhdev, their predecessor-in-interest, in favour of defendants No.1 to 6 to the exclusion of the plaintiff were wrong and illegal being contrary to the judgment and decree dated 23.10.1982. Several requests were made by plaintiff to get the same corrected but in vain. Hence, the suit.

4. Upon notice, defendants No.4 and 7 appeared and filed their joint written statement taking preliminary objections with regard to maintainability; estoppel; locus standi; jurisdiction; concealment of facts etc.

4.1. On merits, it was submitted that Mohar Singh, father of plaintiff and defendant No.7, who was brother of grandfather of defendants No.1 to 3 and 4 to 6 along with Sukhdev were cultivating the suit property in equal shares as *gair marusi* tenant. Thereafter, they jointly purchased the said property in equal shares. After the death of Sukhdev, defendants No.1 to 3 became owner to the extent of 1/8th share and defendants No.4 to 6 became owner to the extent of 3/8th share. Sukhdev,

grandfather of defendants No.1 to 3 and father of defendants No.4 to 6, in good faith, filed the suit and plaintiff in collusion with one Amar Singh got passed the judgment and decree dated 23.10.1982, which is illegal. Plaintiff intentionally did not insert his name in mutation No.1974 just for concealing the facts.

4.2. Remaining defendants including defendant No.5/appellant did not appear before learned trial Court and they were proceeded *ex parte* vide order dated 17.07.2012.

5. No replication was filed.

5.1 Based on rival pleadings, following issues were framed:

- “(1). Whether the plaintiff is joint owner in possession of the suit land to the extent of 1/3rd share vide judgment and decree dated 23.10.1982, as alleged in the plaint? OPP*
- (2) Whether the alleged mutation no. 1974 dated 30.07.1983 sanctioned on the basis of said judgment and decree dated 23.10.1982 and mutation no.70 dated 30.09.2008 regarding inheritance of deceased Sukhdev sanctioned in favour of defendants No.2 to 7, are wrong, null and void, against law and fact and not binding right of the plaintiff, as alleged in the plaint? OPP*
- (3) Whether the defendants are liable to be restrained from alienating the suit land on the basis of wrong revenue record, as alleged in the plaint? OPP*
- (4) Whether the suit is not maintainable in the present form? OPD*
- (5) Whether the civil Court has no jurisdiction to try and decide the present suit? OPD*
- (6) Relief.”*

6. Parties to 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, issues No.1 to 3 and 6 were decided by the learned trial Court in favour of plaintiff and issues No.4 and 5 against defendants. Consequently, suit of plaintiff was decreed with costs to the effect that he is owner of 1/3rd share in the property in dispute on the basis of judgment and decree dated 23.10.1982 and mutation no. 1974 dated 30.07.1983, mutation no.70 and all subsequent revenue entries were declared null and void.

8. Feeling aggrieved, defendants No.1 to 6 went in appeal which was dismissed by learned First Appellate Court, resulting in Regular Second Appeal by defendants before this Court.

9. In its judgment, learned First Appellate Court, *inter alia*, observed as below:

“xxx

13. *Vide the impugned judgment and decree, the learned trial Court has accepted the plea of the plaintiff and he has been declared as owner upto the extent of 1/3" share in the property in dispute on the basis of judgment and decree dated 23.10.1982 (Ex.P5 and Ex.P6) resulted in the case titled as Sukhdev and another versus Amar Singh and another. Learned trial Court has also declared the mutation No.1974 dated 30.07.1983 (Ex.P1), mutation No.70 and all subsequent revenue record prepared on the basis of Ex.P1 as illegal, null and void and has directed for the correction in the revenue record.*

14. *The bone of contention between the parties is Ex.P1 which per the stand of the plaintiff has been wrongly sanctioned, whereas the stand of defendants No.1 to 6 is that the parties are on their settled possession over the suit land, in the light of Ex.P1 wherein Mahadev has no right. Though, in the written statement filed by defendants No.4 to 7, they have alleged that this mutation Ex.P1 bearing No.1974 was wrongly sanctioned wherein the name of the plaintiff was intentionally left out and it was so done in collusion with one Amar Singh who was the contesting defendant in Ex.P4, just*

to conceal the true facts. Further, it is also the stand of the defendants No.4 to 7 that Sukhdev (plaintiff No.1 in Ex.P4) was under the influence of Mahadev and said Sukhdev being an illiterate person did not know about Ex.P4 as well as its result Ex.P5 and Ex.P6.

15. To sort out the controversy between the parties, this Court has perused Ex.P4, Ex.P5 and Ex.P6. In civil suit Ex.P4, Sukhdev son of Maman and Bhagta Ram alias Ram Kumar were two plaintiffs, whereas one Amar Singh, who is not in the pedigree-table of the parties to the present suit, was arrayed as contesting defendant. The present plaintiff Mahadev was arrayed as proforma defendant in Ex.P4. Ex.P4 was decreed vide judgment and decree Ex.P5 and Ex.P6. Through Ex.P4, it was prayed to declare the plaintiffs and proforma defendant therein namely Sukhdev, Bhagta Ram alias Ram Kumar and Mahadev respectively as owners in possession in equal shares. Vide Ex.P5 and Ex.P6, the same relief was granted by the learned trial Court while decreeing the suit (Ex.P4) of the plaintiffs therein. As far as the suit property of Ex.P4 and that of the present suit is there, there is no dispute between the parties, meaning thereby, the property of Ex.P4 had been divided in equal three shares in between three persons namely Sukhdev, Bhagta Ram alias Ram Kumar and Mahadev the present plaintiff. Perusal of Ex.P1 shows that though, it was sanctioned in the light of Ex.P5 and Ex.P6, however, the name of present plaintiff Mahadev was left to be entered therein which has been now challenged by the plaintiff. In the light of the above discussed evidence, this Court has found force in the contention of the plaintiff and has come to the conclusion that the learned trial Court has rightly declared the plaintiff being owner in possession of 1/3" share in the total suit property. As Ex.P1 was not strictly sanctioned in the light of Ex.P5 and Ex.P6, thus, this document as well as the mutation of inheritance Ex.P2 bearing mutation No.70 and all subsequent revenue record, thus, have been rightly declared as illegal, null and void documents.

16. Learned counsel for defendants No. 1 to 6 has contended that the parties to the suit are in their settled possession in the light of Ex.P1. This Court is not inclined to accept the said Submission of learned counsel for defendants No.1 to 6 for the reason that Ex.P1 is that document which

was not correctly sanctioned in the light of Ex.P5 and Ex.P6. To the opinion of this Court Ex.PI was to be strictly entered and sanctioned as per Ex.P5 and Ex.P6 which evidently was not done so by the concerned revenue authorities. In these circumstances, this Court has reached at the conclusion that the learned trial Court has rightly decided issues No.1 to 3 in favour of the plaintiff and has ultimately rightly decreed the suit of the plaintiff vide impugned judgment and decree which do not warrant any kind of interference.”

10. I have heard the learned counsel for appellant and perused the judgments of both the Courts below.

11. Learned counsel for appellant states that plaintiff/respondent No.1 having chosen not to file execution of earlier judgment and decree dated 23.10.1982, cannot seek proprietary rights in the suit property as limitation for enforcing a declaratory decree is 12 years. That apart, he submits that since plaintiff has chosen not to seek execution of decree, appellant and pro forma respondents No.3 to 7 (defendants No.1 to 6) have become owners of the property by way of adverse possession.

11.1 Second argument of learned counsel for appellant is taken up first. A perusal of the record of learned Courts below as well as pleadings of parties clearly reflects that defendants No.1 to 6 neither pleaded any adverse possession nor adduced any evidence in this regard. It is for the first time that such a stand has been taken before this Court. On that ground alone, the same cannot be entertained, particularly in the absence of pleadings or evidence.

11.2. As regards first argument of learned counsel for appellant that plaintiff not having chosen to file execution proceedings, by virtue of non-execution of decree, defendants No.1 to 6 do not *ipso facto* become owners of the suit property, particularly when the same is not even

pleaded. Furthermore, non-filing of execution proceedings does not debar plaintiff to seek requisite declaration and/or injunction *qua* correction of revenue record since it stood established that he has valid title *qua* the suit land.

11.3. On both the counts, no ground for interference by this Court is made out.

12. Moreover, on perusal of the impugned judgments, my considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law, with which I am inclined to agree. There seems no substance in the submissions that the impugned judgments are based on surmises and conjectures.

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 jurisdiction of this Court under Section 100 of the Civil Procedure Code.

16. Apart from the above, the defendants did not file any counter-claim or suit for annulment of the judgment and decree dated

23.10.1982, whereby the plaintiff was declared owner of 1/3rd share of the suit property. Obviously, the said judgment and decree is subsisting and holds the field. Mutation does not create, extinguish or confer title. Simply because, the name of the plaintiff was omitted from the mutation and it was sanctioned in favour of the defendants only, that too wrongly, would not negate the plaintiff's right of ownership. The title of the plaintiff declared by the Court vide judgment dated 23.10.1982 remained unaffected by the entry of mutation.

17. 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.

18. Pending application/s, if any, shall also stand disposed of.

19. No order as to costs.

MARCH 27, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No