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2023:PHHC:080716

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

RSA-2097-2018 (O&M)

Date of decision: 01.06.2023

Smt. Gian Kaur through LRs and others

...Appellants

VS

Tehsildar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Puneet Kumar Bansal, Advocate
For Mr. Raj Kumar Kakkar, Advocate,
For the appellants.

ARUN MONGA, J. (ORAL)

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

2. Having suffered concurrent adverse findings by the two Courts below, plaintiffs are in second appeal before this Court assailing learned trial Court judgment and decree dated 11.03.2015, as upheld by learned First Appellate Court vide its judgment and decree dated 17.10.2017, dismissing the suit of the plaintiff for declaration, permanent injunction and mandatory injunction.

3. Briefly stated, facts, as noticed by learned First Appellate Court, are as under:-

“3.The brief facts are that the appellants filed the above referred suit for declaration, permanent injunction and mandatory injunction alleging that previously, Inder Singh, husband of appellant No.1 and father of appellants No.2 to 4 was owner of the land in dispute. After his death, appellants No.1 to 4 became the absolute owners of the land in dispute on the basis of inheritance of Inder Singh. Appellant No.5 Balwinder Kaur purchased some land from appellants No.1 to 4. She also became owner of 128 shares out of the total 448 shares of the land. It was further stated that previously, there was litigation pending between the respondents and Isher Kaur since deceased through her legal heirs and others qua land in

dispute. Ultimately, a decree was passed in favour of the respondents in the said civil suit. The parties to the said suit intentionally mentioned the khasra numbers of the land in dispute which was owned by Inder Singh, predecessor of the appellants. As per jamabandi for the year 2007-08 the ownership of the land in dispute was shown in the name of the appellants but during the litigation between the parties, the appellants were not aware of the fact of mentioning false khasra numbers of the land owned by the appellants.

4. It was further stated that when the appellants approached The Halqa Patwari for getting jamabandi for the purpose of obtaining loan, they came to know from rapat No.586 dated 20.05.2009 that the suit qua land in dispute was wrongly and illegally decreed in favour of the respondents. The said rapat lodged in connection with the land in dispute qua Dakhal Malkana on the basis of the judgment and decree dated 26.04.1979 passed by the court of Shri S.S. Arora, Sub Judge Ist Class, Ferozepur, was illegal, null and void and liable to be cancelled. Neither parties of the said suit were owners in possession of the land in dispute nor the present respondents were owners in possession of the land in dispute but they had got the orders for seeking possession of the land of the appellants on the basis of illegal decree dated 17.04.1979 and also got entered Rapat No.526 dated 20.05.2009 qua Dakhal Malkana.

5. It was further stated that on the basis of the above said rapat, respondents No.1 & 2 were bent upon to enter and sanction the mutation and respondents No.3 to 8 were bent upon to alienate the land in dispute and also to forcibly dispossess the appellants from the land in dispute, for which they had no right. The cause of action accrued to the appellants and against the respondents on 28.05.2010, when respondents No.3 to 8 tried to forcibly dispossess the appellants from the land in dispute but their attempt was foiled with the intervention of the respectable persons of the locality. Hence, the above referred suit was filed seeking a decree of declaration, mandatory and permanent injunction as referred above.”

4. Upon notice, defendants No.3, 4, 5 (ii), 6 and 8 appeared and filed written statement taking preliminary objections on the grounds of cause of action; barred by limitation etc.,

4.1 On merits, defence taken is that in a civil suit titled "Banta Singh and others Vs. Isher kaur and others" bearing No.80-1 of 1979, which was decreed in favour of the present answering defendants, in which Inder Singh (husband of plaintiff No. 1 and father of plaintiffs No. 2 to 4) was also

impleaded and he filed his written statement separately and in those pleadings, where he admitted the ownership and possession of the present defendants and it was clearly stated that he has no objection if the said suit of plaintiffs was decreed because he has no concern with the suit land.

4.2. The plaintiffs herein thus have no concern with the suit land. They filed the suit only to grab the land of answering defendants without any right or title to do so. The possession has been taken by the answering defendants through Executing Court with the help of the police. So, plaintiffs have neither any surviving rights in the suit land nor they are in possession of the suit land.

4.3. It was further submitted that on the basis of decree dated 26.4.1979, rapat No. 526 dated 20.5.2009 was entered in favour of answering defendants. The answering defendants are thus owners in possession of the suit land. All other material averments of the plaint were denied being wrong and defendants No.3, 4, 5(ii), 6 and 8 prayed for dismissal of the suit.

5. Replication was filed. Based on rival pleadings, following issues were framed:

- “1. Whether the plaintiff is entitled to the declaration as prayed for? OPP*
- 2. Whether the plaintiff is entitled to consequential relief of permanent injunction as prayed for? OPP.*
- 3. Whether the plaintiff is entitled to consequential relief of mandatory injunction as prayed for? OPP.*
- 4Whether the suit of the plaintiffs is hopelessly time barred? OPD.*
- 5. Whether the suit of the plaintiffs is not valued for the purpose of jurisdiction? OPD.*
- 6. Whether the present suit is res judicata? OPD.*
- 7. 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, issue Nos.1 to 4 were decided against plaintiffs and in favour of defendants and issue No. 5 was decided against defendants and in favour of plaintiffs. Issue No.6 was decided against the defendants being not pressed. Consequently, suit of plaintiff was dismissed by learned trial Court vide impugned judgment and decree dated 11.03.2015.

8. Aggrieved, plaintiffs preferred an appeal, which was dismissed by learned First Appellate Court, resulting in instant Regular Second Appeal by plaintiffs before this Court.

9. Learned counsel for appellants submits that learned trial Court wrongly held that suit of plaintiffs was time barred. Suit was within limitation. The alleged rapat regarding alleged delivery of possession was made in the year 2009 and suit was filed in the year 2010. He further submits that learned Additional District Judge did not refer to the issue of limitation while passing the judgment. He was required to give a specific finding on the issue of limitation.

10. Essentially arguments raised 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.

11. I have heard learned counsel for appellants and have gone through the case file.

12. Notwithstanding that the judgment and decree dated 26.04.1979 was passed by the learned Sub Judge First Class, Ferozepur against the predecessor in interest of the plaintiffs way back, and yet, the plaintiffs herein filed their suit only on 03.06.2010. Same is hopelessly barred by time when computed with effect from 26.04.1979, the date of judgment and decree *ibid*. After expiry of limitation, the same could/would not be revived merely because, subsequently a rapat dakhnama was recorded on 20.05.2009 in favour of the contesting defendants. Thus, the learned Courts below rightly held that the suit was time barred.

12.1. I have gone through both the judgments under challenge. In its judgment, learned First Appellate Court, *inter alia*, observed as below:

“21. After hearing both the sides and going through the pleadings as well as the evidence referred earlier, it is found that the appellants have sought the declaration of ownership of the land in dispute on the ground that the civil court decree dated 26.04.1979 passed by the court of Sh. S.S.Arora, Sub Judge Ist Class, Ferozepur, Civil Suit No.80-1 of 1979 decided on 26.04.1979 titled as Banta Singh & others Vs Isher Kaur & others was illegal, null and void and Rapat No.526 dated 20.05.2009 regarding Dakhal Malkana on the basis of the aforesaid judgment and decree was also illegal, null and void and not binding on the rights of the appellants. The copy of Rapat No.526 dated 20.05.2009 has been produced in evidence as Ex.D1 and copy of the judgment and decree dated 26.04.1979 under challenge in the present suit has been produced in evidence as Ex.D3A perusal of the judgment and decree shows that Inder Singh, husband of appellant No.1 and father of appellants No.2 to 4 was defendant No.6 in the said suit, in which the judgment and decree Ex.D3 were passed. As the decree was passed against predecessor of the appellants, they are also bound by the said judgment and decree. There is no evidence that the judgment and decree Ex.D3 was set aside in further appeal. It is well settled that a judgment and decree of civil court is binding unless it is set aside on ground of fraud. It is neither the case of the appellants nor there is any evidence that the judgment and decree Ex.D3 was obtained from the predecessor of the appellants and other defendants of that suit on account of misrepresentation or fraud. As the judgment and decree under challenge was passed against the predecessor of the appellants, it cannot be said that they had no knowledge of the said judgment and decree. Moreover, Inder Singh,

predecessor of the appellants never challenged the judgment and decree Ex.D3 during his lifetime. It was held in Sneh Gupta Vs Devi Sarup 2009 RCR (Civil) 129 (SC) that a decree which is void must be set aside within the period of limitation. It is not the law when decree is void, no period of limitation shall be attracted at all.

22. *The rapat No.526 of 20.05.2009 Ex.D1 has been entered on the basis of the warrants issued by the executing court of Sh. Ajit Singh, Civil Judge (Jr. Divn.), Ferozepur. As the rapat has been entered on the basis of the orders of the Civil Court, it cannot be held 17/10/201711 to be illegal, null and void. The remedy available with the appellants was to approach the executing Court instead of filing the civil suit.*

23. *For the reasons recorded above, the findings of the learned lower court on issues No.1 to 4 do no call for any interference in appeal and are hereby affirmed.”*

13. Having perused the impugned judgments, I am of the view that the submissions made before learned Courts below were duly considered and repelled by recording 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.

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

15. 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.

16. 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 Civil Procedure Code.

- 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.

(ARUN MONGA)
JUDGE

01.06.2023

vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No