

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**117****RSA No.484 of 2023 (O&M)****Reserved on : 12.02.2024****Date of Decision: 20.02.2024**

Smt. Sudesh and Others

....Appellants

VERSUS

Ramesh and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Saurabh Dalal, Advocate for the appellants.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellants against the judgments and decrees dated 14.03.2017 and 18.11.2022 passed by the Trial Court and the First Appellate Court respectively.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondents filed a suit seeking a decree of permanent injunction restraining the defendant-appellants from interfering in the peaceful proprietary possession of the plaintiff-respondents over land measuring 96 kanals 4 marlas fully described in the plaint and for declaring that the sale deed No.2369 dated 05.03.2013 executed by the defendant-appellant No.4 in favour of defendant-appellant Nos.1 to 3 and mutation Nos.5149 dated 10.03.2013 and 3131 dated 31.08.2014 are illegal, null and void and not binding on the rights of the plaintiff-respondents. It was the pleaded case of the plaintiff-respondents that they are co-sharers in the suit land to the extent

of half share along with Dhan Singh son of Rati Ram @ Ratia and Jit Singh son of Rati Ram, who had 1/4th share each. Defendant-appellant No.4 is the wife of Jit Singh and defendant-appellant Nos.1 to 3 are her daughters-in-law. It was further averred that the defendant-appellants have no right, title or interest in the suit land and that she has illegally claimed herself to be the widow of Bir Singh son of Ratia. It was also averred that the defendant-appellant No.4 got a mutation of inheritance No.2321 qua the property of Bir Singh entered in her favour pursuant to the order dated 18.10.2012 passed by the District Revenue Officer-cum-Assistant Collector Ist Grade, Jind. Against the said order the plaintiff-respondents and co-sharers preferred an appeal before the Collector, Jind which was accepted vide order dated 14.05.2013 and the order passed by the District Revenue Officer-cum-Assistant Collector Ist Grade was set aside. However, in the meantime defendant-appellant No.4 took undue advantage of the order dated 18.10.2012 and got the sale deed dated 05.03.2013 executed in favour of defendant-appellant Nos.1 to 3 and mutation was also sanctioned on the basis of the said sale deed. It was further averred that the defendant-appellant No.4 got mutation No.3131 dated 31.08.2004 entered in her name on the basis of the order dated 19.03.2004 passed by the Commissioner, Hisar Division whereas the said order was set aside by the Financial Commissioner vide order dated 06.01.2015. Hence, the suit. The defendant-appellants put in their appearance and filed their written statements. They pleaded that defendant-appellant No.4 was the wife of Bir Singh. It was further averred that a civil suit was filed being Civil Suit No.552 dated 01.11.2008 titled as 'Murti Devi vs. Ramesh Kumar etc.' decided on 20.10.2012 wherein it was held that Murti Devi was widow of Bir Singh and

was entitled to inherit his share. On merits it was claimed that Murti Devi had inherited the share of Bir Singh being his wife. On the basis of pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
2. Whether the plaintiff is further entitled for a decree of declaration to the effect that Sale deed No.2369 dated 05.03.2013 executed by defendant No.4 in favour of defendants No.1 to 3, mutation No.5149 dated 10.03.2013 and mutation No.3131 dated 31.08.2014 are illegal, null and void as prayed for ? OPP
3. Whether the suit of plaintiff is not maintainable in the present form ? OPD
4. Whether the plaintiff has no cause of action and locus standi to file the present suit as alleged ? OPD
5. Relief.

3. The Trial Court decreed the suit vide judgment and decree dated 14.03.2017. Aggrieved by the same an appeal was preferred by the defendant-appellants which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 18.11.2022. Hence, the present regular second appeal.

4. Learned counsel for the defendant-appellants would contend that Murti Devi was the wife of Bir Singh and that mutation qua the inheritance was rightly sanctioned in her name and that on the basis of the said mutation she had every right, title or interest to execute the sale deed.

5. Heard.

6. In the present case the judgment and decree dated 20.10.2012 (Ex.D5 and Ex.D6) relied upon by the defendant-appellants were set aside by the First Appellate Court vide judgment and decree dated 06.01.2015 (Ex.P16 and Ex.P17) and it was held that the marriage of Murti Devi and Bir Singh has not been established. This Court in the Regular Second Appeal vide judgment dated 13.05.2019 upheld the findings by the First Appellate Court. Once the judgment passed by this Court has attained finality it does not lie in the mouth of the defendant-appellants to contend that defendant-appellant No.4 had any right, title or interest in the property of Bir Singh. The defendant-appellant No.4 (Murti Devi) who executed the sale deed in favour of defendant-appellant Nos.1 to 3 was herself not competent to execute the same since she had no title over the suit property. No other point has been argued.

7. In view of the above, no question of law, much less any substantial question of law, arises for determination in the present case. The appeal, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.02.2024

jk

(ALKA SARIN)
JUDGE

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