

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

RSA-858-1994
Date of decision: 29.04.2024

KAMLA ..Appellant

Versus

RAMESH CHAND & ORS. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Dr. R.N. Bharti, Advocate
for the appellant.

Mr. Vinay Kumar Pandey, Advocate
for respondent No.2.

Mr. Rajesh Sethi, Advocate
and Mr. Sachin Gupta, Advocate
for respondent No.3, 6, 8 & 9.

Ms. Aparna Singhal, Advocate
for respondent No.4, 5 and 7.

ANIL KSHETARPAL, J(Oral)

1. The plaintiff has filed this regular second appeal challenging the correctness of the judgment and decree passed by the trial Court, which in appeal has been affirmed by the First Appellate Court.
2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
3. Sh. Harnam Singh was the common ancestor of the parties. He was first married to Smt. Manauri. She gave birth to Smt. Kamla from the loins of Sh. Harnam Singh. Subsequently, Sh. Harnam Singh married to Smt. Indravati, who gave birth to five children including Sh. Rajpal from the loins of Sh. Harnam Singh. While acknowledging the family settlement, Sh. Harnam Singh suffered a consent decree dated 10.06.1974, in favour of the

appellant with respect to the land measuring 20 kanal and 12 marlas. Smt. Indravati and her five daughters filed a suit challenging the decree dated 10.06.1974. Sh. Rajpal filed a separate suit challenging the decree dated 10.06.1974. The suit filed by Smt. Indravati and her children was dismissed in default on 20.01.1981 as Smt. Indravati, her daughters or their counsel did not appear in Court on the date fixed. On 22.01.1981, the plaintiff executed and got an affidavit attested admitting that Sh. Rajpal is the owner of 20 kanal and 12 marlas land. The suit filed by Sh. Rajpal was decreed on 24.01.1981. Thereafter, Sh. Rajpal transferred the property by virtue of six sale deeds executed in favour of various vendees. Three sale deeds were executed on 08.12.1981, whereas, three sale deeds were executed during the pendency of the suit.. The plaintiff filed suit in August, 1982 challenging the decree dated 24.01.1981, in which Sh. Rajpal did not appear resulting in decree dated 03.08.1984.

4. Thereafter, she filed the present suit on 16.04.1986. In this suit, Sh. Rajpal was proceeded against ex parte. The remaining defendants pleaded that they are bonafide purchasers of the property for valuable consideration. They had no notice of the dispute between the plaintiff and her step-mother and step siblings. Both the Courts came to a conclusion that the decree dated 03.08.1984, is a result of collusion between the plaintiff and Sh. Rajpal. It has also been held that Sh. Rajpal was the ostensible owner of the property and by virtue of Section 41 of the Transfer of Property Act, 1882, they are the bonafide purchasers.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

6. The learned counsel representing the appellant submits that while appearing in evidence, the plaintiff has admitted her signatures on affidavit dated 22.01.1981, however, she has denied the knowledge of its contents. He submits that the efforts have been made to deprive the plaintiff of her property by playing fraud. He submits that two suits were filed challenging the decree dated 10.06.1974, out of which one was dismissed in default on 20.01.1981 and thereafter, an affidavit from her was got executed.

7. This Court has considered the submissions of the learned counsel representing the parties.

8. The affidavit dated 22.01.1981 is 'Ex.D-1' on the record. It is scribed on a non-judicial stamp paper of Rs.3/-. It runs into two pages. Smt. Kamla Devi has not only signed both the pages but also thumb marked the same. She has appended her signatures and thumb impression on the first page, whereas, she has appended her signatures and thumb impression on the second page on two different places. She admits her signatures. It is her case that this affidavit was obtained by playing fraud, however, she has failed to prove the same. In the affidavit, she has acknowledged that the suit filed by Smt. Indravati had been dismissed in default on 20.01.1981, and she has entered into a settlement. She has admitted that she acknowledges Sh. Rajpal as the owner of the property and she has no objection if the suit filed by Sh. Rajpal is decreed.

9. Keeping in view the aforesaid facts and Smt. Kamla Devi's subsequent conduct, which resulted in decree dated 24.01.1981, it is evident that she willingly acknowledged Sh. Rajpal as the owner of property. Moreover, Sh. Rajpal never appeared in a subsequent suit filed by the

plaintiff. Admittedly, three sale deeds executed by Sh. Rajpal i.e. Ex.P-13, Ex.P-14 & Ex.P-16 were before filing of the suit by plaintiff. She did not implead the purchasers as party in the aforesaid suit.

10. Thus, both the Courts have correctly come to a conclusion that the respondents are the bonafide purchasers of the property and the decree dated 03.08.1984, was result of collusion between the plaintiff and her family members.

11. Hence, no ground to interfere is made out.

12. Dismissed accordingly.

13. All the pending miscellaneous applications, if any, are also disposed of.

April 29th, 2024

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No