

S. No.118

2024:PHHC:090586



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

RSA No.1157 of 2021

Date of Decision: 18.07.2024

Raghubir Singh

Vs.

Sher Singh and others

.....Appellant

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ankush Rampal, Advocate for the appellant.

DEEPAK GUPTA, J. (Oral)

Civil Suit bearing CIS No.CS/278/2016 filed by the plaintiff – Raghubir Singh (now appellant) seeking a decree of permanent injunction regarding the property in dispute against defendants – Sher Singh etc., (now respondents) has been dismissed by learned Civil Judge (Junior Division) Shahabad, District Kurukshetra vide judgment and decree dated 09.11.2016. The appeal bearing CA No.490 of 2016 filed by the plaintiff- appellant has also been dismissed by learned Additional District Judge, Kurukshetra on 04.12.2019. Thus, the plaintiff of the case has approached this Court against the concurrent findings of the Courts below.

2. According to plaintiff, he is joint owner in possession of the suit land. He challenged the legality and validity of the judgment and decree dated 06.08.1993 passed in a Civil Suit titled “Jagir Singh and others Vs. Ajaib Singh and others”, alleging that he never suffered the said decree and that said judgment and decree is based on fraud and that he came to know only during partition proceedings when Patwari informed him in this regard.

Defendants contested the suit by pleading that plaintiff had suffered the



decree at his own, on account of the family settlement. After framing necessary issues and taking the evidence, the trial Court disbelieved the case of the plaintiff and dismissed the suit.

3. The First Appellate Court while considering the contention of the plaintiff- appellant regarding his plea of fraud and misrepresentation, observed in para Nos.15 and 16 of the judgment as under:-

“15. First of all, the contention of learned counsel for the appellant – plaintiff is that impugned judgment and decree dated 6.8.1993 is result of misrepresentation and fraud played upon the appellant-plaintiff by the respondents- defendants as he never gave consent nor filed any written statement nor given any statement in the Court regarding the suit land. It is the further contention of the appellant-plaintiff that no family settlement in respect of the suit land had ever been taken place at any point of time much less in the month of April, 1991 as alleged and a calculated fraud had been played upon him by the respondents – defendants. The certified copy of plaint of Civil Suit No.527 of 1993 titled as “Jagir Singh and others Versus Ajaib Singh and another” has been placed on record by both the parties as ExP4/Ex.D1. A bare perusal of this document makes it clear that the said suit No.527 of 1993 was instituted by present respondents- defendants No.1 to 3 against the present respondent- defendant No.4, impleading him as defendant No.1 and the present appellant-plaintiff impleading as defendant No.2. In this document, the suit land, subject matter of the present suit and mentioned in para No.1 and the land mentioned in para No.3 of the present suit, have been mentioned in paras No.2 (ii) & 2(i), respectively. It is categorically mentioned in para No.1 of plaint, Ex.P4/Ex.D1, that there was a dispute between the parties regarding the ownership and possession of the suit land and in order to settle the dispute between the parties,



a family settlement was arrived in the year April, 1991, vide which, defendant No.1 (appellant- plaintiff) gave 32/880 and 228/880 in favour of the plaintiffs of that suit out of his share in the land detailed in para No.1(ii) of the plaint, which is the land subject matter of the present litigation. Similarly, defendant No.1 of that suit, now defendant No.4 in the present suit, also gave 249/1064 share out of the land detailed in para No.1(i) of the plaint, which is mentioned in para No.3 of the present suit, to each of the plaintiffs (now defendants No.1 to 3 herein) and also delivered the possession of the suit land to them. In that suit, the plaintiff along with defendant No.4 appeared in the Court through their counsel Shri R.N. Patwa Advocate as is clear from his power of attorney Ex.DW2/1 on the record. Further the perusal of the record shows that Ex.P5/Ex.DW2/2 is the admitted written statement, which was filed by the present appellant- plaintiff and respondent- defendant No.4 Ajaib Singh in the said civil suit admitting the claim of the present respondents- defendants No.1 to 3 and they also suffered a joint statement, Ex.P7/Ex.DW2/3, admitting the claim of the present respondents- defendants No.1 to 3, plaintiffs in that suit, and stated that the suit may be decreed. In support of their contentions, the respondents- defendants have examined Shri R.N. Patwa, Advocate as DW2, who has proved the power of attorney Ex.DW2/1, certified copy of written statement Ex.DW2/2 and the joint statement made by present plaintiff and defendant No.4 as Ex.DW2/3. He has duly identified his signature as well as signatures of present plaintiff and defendant No.4 on the above said documents.

16. From the above referred evidence coupled with the testimony of DW2, it is crystal clear that the appellant- plaintiff has duly appeared before the Court in the earlier litigation, he filed written statement and suffered statement in open Court thereby admitting the claim of the plaintiffs of that suit and decreeing the suit. Hence, it



cannot be said that any fraud had ever been played upon the appellant- plaintiff or that he had put his thumb impressions on the said documents under any fraud or misrepresentation, more particularly, when he was duly represented by DW2 Shri R.N. Patwa, Advocate, who has specifically stated that he was engaged by Raghubir Singh to appear in that case.”

4. Learned First Appellate Court further observed that there was nothing on record to suggest that appellant- plaintiff had ever made any complaint against defendants on account of fraud having been played upon him. It was observed that the plea of fraud whether taken in civil or criminal case is to be proved beyond reasonable doubt and that plaintiff had failed to discharge the onus in this regard and as such, his oral statement could not be believed.

5. Contention of learned counsel for the appellant before this Court is that evidence on record has not been properly appreciated. However, learned counsel for the appellant could not convince this Court regarding any illegality or perversity passed by the Courts below in the concurrent findings of fact. The judgments passed by the Courts below are found to be based upon proper appreciation of evidence on record. This Court does not find any justifiable ground to interfere in the well-reasoned concurrent findings of fact as recorded by the Courts below.

6. No substantial question of fact is found to be involved.

7. Dismissed.

July 18, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No