



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1187-2024 (O&M)

Date of Decision: - 09.12.2024

SARITA DEVI

... APPELLANT

Vs.

SMT. SANTOSH SHARMA AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Manoj Makkar, Advocate, for the appellant.

DEEPAK GUPTA, J.

Application bearing CM N: 12019-C of 2024 is allowed. Annexure P-7 to P-9 are taken on record.

In the suit seeking decree of permanent injunction regarding property in dispute filed by plaintiff Smt. Sarita Devi (*appellant herein*), an application under Order VII Rule 11 CPC for rejection of the plaint was moved by some of the defendants. That application was allowed by the trial Court on 29.08.2019. The appeal filed by the plaintiff was dismissed by the Appellate Court on 22.02.2024. Against this concurrent finding, rejecting the plaint, plaintiff has approached this Court by way of present Regular Second Appeal.

2.1 Admittedly, Ram Richhpal was the owner of the suit property. On his death in 1992, he was succeeded by his widow Smt. Chhanno Devi, three sons Ramesh, Jai Parkash and Dalip; and two daughters namely, Krishna Devi and Geeta. Smt. Chhanno i.e. widow of Ram Rachhpal continued in possession of the suit property and she executed a Will dated 21.07.2005 in favour of her grandson Rajesh i.e. one of the sons of Dalip. Said Rajesh further executed a gift deed dated 01.02.2007 in favour of his wife Sarita (*who is the plaintiff-appellant in this case*).

2.2 Ramesh i.e. another son of Ram Rachhpal filed Civil Suit No.54/1 of 2007 challenging the validity of the aforesaid Will as well as gift deed. Said suit was decreed on 15.07.2013. The appeal filed by the defendants of that case was dismissed on 04.02.2017. Defendants of that case even filed Regular

Second Appeal against the aforesaid judgments, which was dismissed by this High Court.

2.3 Thereafter, the present suit has been filed by plaintiff-Sarita Devi i.e. wife of Rajesh seeking a decree of permanent injunction to restrain the defendants from interfering in her possession in the suit property and also to declare that decree dated 15.07.2013, whereby Will and gift deed as above, were declared as null and void, are not valid.

2.4 It is in the aforesaid backdrop that the plaint was rejected by the trial Court on the application moved under Order VII Rule 11 CPC and the appeal was dismissed.

3. Assailing the aforesaid orders rejecting the plaint, it is contended by learned counsel that Court is required to look into the allegations in the plaint and as such, the Courts committed error in rejecting the plaint, as the issue of bar of *res judicata* is to be tried during trial.

4. After hearing learned counsel and perusal of the paper-book, this Court does not find any merit in the present appeal.

5. It will be relevant to refer to the observations made by the First Appellate Court, which read as under: -

“10. The controversy in the present case revolves around the fact that the matter in issue involved in the present suit has already been decided on merits in a previously instituted suit by Ramesh, husband of defendant No.1 against the appellant-plaintiff and her husband Rajesh, defendant No.11. Said suit was based on the same cause of action and the parties to the suit were also the same.

11. It is an admitted fact between the parties that Smt. Chhanno Devi wife of Shri Ram Richhpal, claiming herself to be the owner of the house in dispute had executed the Will dated 21.07.2005 in favour of her grandson i.e. defendant No.11 Rajesh (husband of the plaintiff). After the death of Smt. Chhanno Devi, Rajesh executed a gift deed dated 01.02.2007 with regard to the house in dispute in favour of the appellant. However, when the plaintiff and her husband raised the claim over the house in

dispute on the basis of Will dated 21.07.2005 and gift deed dated 01.02.2007, Ramesh Sharma son of Shri Ram Richhpal, filed a Civil Suit No.54/1 of 2007 wherein the appellant and her husband were impleaded as defendants No.1 and 2. Said Civil Suit was partly decreed by the Court of Ms. Anita Dahiya, the then learned Civil Judge (Senior Division), Rohtak vide judgment and decree dated 15.07.2013 to the effect that Will dated 21.07.2005 executed by Smt. Chhanno Devi in favour of defendant No.1 and subsequent gift deed dated 01.02.2007, executed by defendant No.1 in favour of defendant No.2 on the basis of Will dated 21.07.2005 are illegal and thus, set aside. The appeal filed by the appellant and her husband against the judgment and decree dated 15.07.2013 was dismissed by the Court of Shri Sandeep Kumar Duggal, the then learned Addl. District Judge, Rohtak vide judgment and decree dated 04.02.2017. It is worthwhile to mention here that the appellant and her husband preferred a Regular Second Appeal No.1423 of 2017 before the Hon'ble High Court challenging the judgment and decree of Trial Court dated 15.07.2013 and learned Appellate Court dated 04.02.2017 and the same was also dismissed by the Hon'ble High Court on 10.08.2017. No appeal has been filed by either of the parties against the order dated 10.08.2017 passed by the Hon'ble High Court and thus, the judgment dated 15.07.2013 passed by learned Trial Court has attained finality.

12. The appellant-plaintiff has filed the present suit seeking a decree for permanent injunction restraining the defendants No.1 to 10 from interfering in her peaceful possession over the house in dispute and not to dispossess her forcibly therefrom. The appellant-plaintiff further sought a decree for declaration that she be declared owner in possession of the house in dispute and also the judgment of Civil Suit No.54/1 of 2007 declaring the Will dated 21.07.2005 executed by Smt. Chhanno Devi in favour of her husband Rajesh Kumar and gift deed dated 01.02.2007 executed by her husband in her favour is null and void and no judgment in the eyes of law because the Court was misled while seeking the declaration to be the owner of the house in dispute.

13. It is not the case of the appellant-plaintiff that she or her husband were not party to the previous suit or the said suit was decreed on 15.07.2013 in their absence. They being party to the previous suit are bound

by the said judgment and decree and they cannot be allowed to claim any right ignoring the said judgment and decree which has been upheld up to the Hon'ble High Court. Since the Will dated 21.07.2005 executed by Smt. Chhanno Devi in favour of Rajesh, husband of the appellant has already been set aside and even the gift deed dated 01.02.2007 executed in her favour by her husband has also been set aside by the competent Court of law, it does not lie in the mouth of the appellant-plaintiff to assert otherwise or to raise any claim by ignoring the said judgment and decree.

14. It is settled proposition of law that a person cannot pass the title better than he is having. If this suit is entertained and proceeded further then it will amount to misuse of process of law also because in that situation there will be no end of litigation. Moreover, it is not the case of the appellant that any fraud has been committed by Ramesh Sharma, plaintiff in the previous suit. Learned Trial Court has passed the order dated 29.08.2019 by taking into consideration all the relevant facts and provisions of law and there exist no ground to set aside the said order. As per provision as envisaged under Section 11 of the CPC, if any matter in issue between the same parties based upon the same cause of action has already been adjudicated upon between them on merit, second suit based upon the same cause of action between the same parties, claiming the same relief, cannot be entertained.

15. Consequent upon my aforesaid discussion, there appears no reason to differ from the observations made by the learned Trial court to the effect that the present suit filed by the appellant-plaintiff is hit by Sections 11 and 12 CPC. Accordingly, the appeal is dismissed. Memo of costs be prepared accordingly."

6. It is, thus, clear that the issue being raised by the plaintiff in the present suit i.e. challenging the validity of the Will and gift deed, had already been adjudicated upon by the Court in an earlier Civil Suit No.54/1 of 2007 filed by Ramesh, the husband of plaintiff. The suit was decreed. The appeal filed by husband of the plaintiff and the further appeal before this Court has since been dismissed. It is not the case of the plaintiff that matter was taken up before Hon'ble Supreme Court. As such, the issue relating to the validity of the Will and gift deed has obtained finality and therefore, the present suit

is nothing but a clear abuse of process of law. This Court is of the view that the Courts below have not committed any error in holding the suit to be barred by the principle of *res judicata* and so has rightly rejected the plaint.

7. As such, finding no merit in the present appeal, the same is hereby dismissed.

09.12.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>