

CR-2841-2022 (O&M)

1

2024:PHHC:057667

133 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2841-2022 (O&M)

Date of decision: 26.04.2024

Chaman Singh and another

....Petitioners

Versus

Karnail Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Ashmeen Kaur and
Ms. Khushi Suryavanshi, Advocates for
Mr.Lupil Gupta, Advocate for the petitioners

Mr.Rajiv Joshi and
Ms. Manjari Joshi, Advocates for respondent no.11

ANIL KSHETARPAL, J (Oral)

1. In this revision petition, the plaintiffs assail the correctness of rejection of their plaint by the trial court vide order dated 25.05.2018 which in appeal, has been affirmed by the First Appellate Court.
2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.
3. The plaintiffs have filed a suit for declaration. Para 15 of the plaint reads as under:-

“15. It is therefore prayed that a judgment and decree for declaration to the effect that execution proceedings in execution No.72/2008 decided by the Hon’ble Court Sh.Amandeep, CJJD Jagraon on 22-12-2014 and subsequent misc applications therein decided by the Hon’ble Court of Ms. Anurada CJJD Jagraon decided on 02-3-2016

and the auction proceedings dated 17-8-2014 conducted in the said execution proceedings and the sale deed bearing Vasika No.476 dated 09-9-2016 and mutation No.911 of village Bahadur Ke, pertaining to 8k-0M land being 1/3 share out of land measuring 24 k-0M comprised in khata no.78/95, Mustil No.31, Killa no.1,2 &3 as per jamabandi for the year 2012-13 of village Bahadar Ke, Tehsil Jagraon District Ludhiana are illegal, null and void and liable to be set aside and do not effect the rights of the plaintiff in suit land and is the result of collusion between the defendants No.5 to 11 and also the result of fraud, practiced upon the court by defendants No.5 to 11 in the said execution and misuse of process of law with a consequential relief for grant of permanent injunction restraining the defendants from interfering in any way or dispossessing the plaintiffs illegally and forcibly from land measuring 12 K-0M land comprised in Mustil no.31, killa no.2, (8K-0M), 1(1K-0M eastern side), 3 (1K-0M Western side), 10 (2K-0M) situated at village Bahadar Ke, Tehsil Jagraon, District Ludhiana otherwise then in due course of law as the plaintiffs are in possession of suit land on the basis of agreement of possession dated 15.12.2002 executed by Gurnam Singh s/o Labh Singh resident of Village Baghian for a consideration of Rs.90,000/- which the Gurnam Singh received under the agreement and delivered possession to the plaintiff as the plaintiffs are entitled to protect their possession by the doctrine of part performance under section 53 A of Transfer of Property Act on the basis of oral and documentary evidence.

Any other additional alternative relief which this Hon'ble Court deemed fit may also be granted in favour of plaintiffs and against the defendant."

4. In substance, the plaintiffs are claiming that Sh.Gurnam Singh, the previous owner, on receipt of the entire sale consideration entered into an agreement of possession cum sale in their favour. The trial court, while exercising powers under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') has rejected the plaint with the following observations:-

"So, in the present case, plaintiffs have only sought the declaration that the proceedings o the civil court be declared null and void, but they have not sought further declaration to the effect that they are in owner in possession of the suit property and so further, in view of above-discussion, it is also clear that the plaintiffs in the present case have failed to prove their possession and as such, the present suit is hit by the Provisions of Section 34 of Specific Relief Act, 1963 and as such, the same is not maintainable."

5. The First Appellate Court has dismissed the plaintiffs' appeal while making the following observations:-

"After giving my anxious thoughts to the rival contentions and perusal of pleadings and evidence, this court has to find out that whether the findings recorded the learned lower court on the controversy is sustainable or not. The appellants specifically pleaded that they are in possession of the suit property as they had entered into one agreement to sell with Gurnam Singh on 15.10.2000 and they

had paid the entire sale consideration to said Gurnam Singh. But this averments of the plaintiffs is not digestible as if the plaintiffs had actually entered into an agreement to sell with Gurnam Singh and had paid the entire sale consideration to him then why they had not got the sale deed executed in their favour. Perusal of agreement to sell, it is clear that it is not registered document and when it is not registered document then it cannot be used to prove this fact that the possession of the property has been transferred from Gurnam Singh to the plaintiffs through this document. The plaintiffs are seeking a declaration the proceedings of the civil court be set aside, Further perusal of the court proceedings shows that the executing court conduce the proceedings as per the decree passed the trial court. It is well settled law that executing court cannot go beyond the decree. The plaintiffs has no right to challenge the decree as well as proceedings while filing the present suit. The plaintiffs only can file the objection during the pendency of execution proceedings. But the plaintiffs did not file any objection at that time. Section 34 of Specific Relief Act, 1963 says that any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right and the court may in its discretion make therein a declaration that he is so entitled, provided that no court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so. In the present case plaintiffs have only sought the declaration that the proceedings of the civil court

be declared null and void, but they have not sought further declaration to the effect that they are in owner in possession of the suit property. So in view of above discussion the suit of the plaintiffs is not maintainable. The learned lower court rightly rejected the plaint of the plaintiffs. Hence, there is no merit in the submissions put forth by Ld. Counsel for the appellants. Consequently, the findings delivered on the controversy is found to be well reasoned, legal and speaking and as such, the same is hereby affirmed.”

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

7. Section 34 of the Specific Relief Act, 1963 (hereinafter referred to as ‘1963 Act’) enables any person to file a suit seeking declaration of status or to any right as to any property whereas Section 31 provides for the cancellation or annulment of a written instrument. Proviso to Section 34 lays down that where a plaintiff is able to seek further relief than a mere declaration of title and he omits to do the same, the court may refuse such declaration.

8. In this case, the plaintiff has sought decree of declaration that the judgment and decree passed in a previous suit was result of collusion between defendant no.5 to 11 and also result of fraud practised upon the court. A prayer for consequential relief of injunction was also made because the plaintiffs are claiming to be in possession of the property. The trial court has not granted an opportunity to the plaintiffs to prove their case. While making sweeping observations that the

plaintiffs have failed to prove their possession, the Courts have overlooked that the plaintiff has not been given opportunity to prove his case. Similarly, the First Appellate Court has dismissed the appeal while observing that the averments of the plaintiffs are insubstantial and based on whims and fancies and the agreement to sell is not registered. No reference to the statutory provision has been made that mandates an agreement to be registered. Even otherwise, the plaintiffs' case could be considered in the context of Section 53-A of the Transfer of Property Act, 1882. Rejection of the plaint has serious consequences, as it results in dismissal of the suit without permitting the parties to prove their case. Hence, a significant responsibility lies on the Presiding Judge to pass orders rejecting the plaint only if he is certain that the plaint is liable to be rejected in accordance with the grounds enlisted under Order VII Rule 11 CPC. The First Appellate Court is presided over by a member of Superior Judiciary, who has years of experience. Still, the First Appellate Court has overlooked these facts.

9. Learned counsel representing the respondents submits that the plaintiffs while filing the suit have challenged the execution proceedings but have not challenged the judgment and decree.

10. This Court has considered the submissions made by the learned counsel representing the parties. It is not the case of the defendants that the plaintiffs were a party to the previous judgment and decree. Hence, they were not required to seek its annulment or cancellation. They were required to file a suit for declaration which has been filed. The requirement of challenging the court judgment and

decree would arise only if Section 31 of the 1963 Act is applicable. Apart from Section 31, there is no concept of challenging a court's decree. The plaintiff is required to file a suit for declaration that such judgment and decree is not binding on his rights. Moreover, the plaintiffs have already asserted that the judgment and decree is a result of fraud played upon the court by the defendants.

11. Consequently, the impugned orders passed by both the courts below are set aside and the suit filed by the plaintiffs is restored to its original number.

12. The revision petition stands allowed.

13. Needless to observe that the observations made by this Court or by the courts below in the impugned order shall not be considered as the final expression on the merits of the case.

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

26.04.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE