



In the High Court of Punjab and Haryana at Chandigarh

(140)

RSA No.1704 of 2024(O&M)

Date of Decision: 16.07.2024

Kamla

.....Appellant

Versus

Mahabir Singh and others

....Respondents

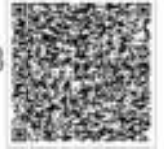
CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. R.S. Panghal, Advocate for the appellant.

HARKESH MANUJA, J. (ORAL)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 25.04.2017 and 29.02.2024 passed by the Courts below whereby a suit for declaration and permanent injunction filed at the instance of respondents No.1 to 3/plaintiffs stands decreed. (Parties hereinafter shall be referred to as their status in the trial Court)

2. Briefly stating, the dispute in the present case revolves around the estate of deceased Sajjan Singh, who happened to be father of plaintiff No.1 and grandfather of plaintiff Nos.2 and 3 and also father of defendant Nos.2 and 4, besides being the husband of defendant No.3. Relying upon a Civil Court decree dated 11.02.1992 passed in their favour, on the basis of a family settlement with their father Sajjan Singh, the plaintiffs filed a suit for declaration claiming themselves to be owners in possession to the extent of 3/4th share out of 1/3rd share of Sajjan Singh/defendant No.1 in the land situated in the revenue estate of village Mansarwas and also 3/4th share out

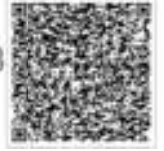


of 1/2 share of Sajjan Singh/defendant No.1 of the land situated in the revenue estate of village Kairu. A challenge was also laid to release deed No.1072 dated 23.07.2009 executed by defendant No.1 in favour of defendant No.2 and also another release deed No.1073 dated 23.07.2009 executed by defendant No.1 in favour of defendant No.4, besides challenging the consequential mutations.

3. During pendency of the suit, the land transferred in favour of defendants No.2 and 4 was returned back vide another release deed No.3739 dated 05.12.2011, however, defendant No.2 resiled from any such settlement/arrangement and contested the suit by filing detailed written statement.

4. The Trial Court vide judgment and decree dated 25.04.2017 declared the plaintiffs to be owners in possession of the suit property while holding the release deeds bearing No.1072 and 1073 dated 23.07.2009 to be illegal, null and void. Aggrieved thereof, the appellant/defendant No.2 filed the first appeal, however, the same came to be dismissed by the learned Additional District Judge, Bhiwani, vide judgment and decree dated 29.02.2024.

5. Impugning the aforesaid two judgments and decrees passed by the Courts below, learned counsel for the appellant submits that the suit for declaration filed at the instance of the plaintiffs on 27.07.2013 while claiming ownership on the basis of consent decree dated 11.02.1992 was clearly barred by limitation. He also submits that once a decree was already there in favour of plaintiffs, no subsequent suit was maintainable at their

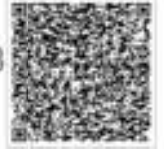


instance seeking fresh declaration qua their title. He further points out that plaintiffs No.2 and 3 having previously filed an identical suit i.e. Civil Suit No.1300 of 2009 titled as ‘Anil Kumar and others Vs. Sajjan Singh and others’ seeking declaration based on consent decree dated 11.02.1992 and also challenging release deed No.1072 dated 23.07.2009 though having withdrawn the same in terms of order dated 07.08.2010 passed by the Court of learned Civil Judge (Junior Division)-cum-Judge, Lok Adalat, Bhiwani, were having no right to file the second suit on the same cause of action in terms of Order 23 Rule 1 CPC.

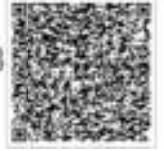
6. Learned counsel for the appellant also submits that in view of the amendment carried out in Section 6 of the Hindu Succession Act, 1956 (in short ‘the Act’), the appellant being the daughter was having a vested right in the ancestral property owned by her father Sajjan Singh and thus, no declaration as sought for by the plaintiffs could have been granted in their favour and thus, prays that on account of aforementioned contentions, the impugned judgments are liable to be set aside.

7. I have heard learned counsel for the appellant, gone through the paperbook and unable to find substance in the submissions made on behalf of the appellant/defendant No.2.

8. In the present case, the declaration qua ownership of the property in question by the plaintiffs was claimed while relying upon the consent decree dated 11.02.1992, passed in their favour in Civil Suit No.715 of 1991 titled as ‘Mahabir Singh and others Vs. Sajjan Singh’ and the said judgment and decree were proved on record as Ex.P1 and Ex.P2. Despite



the said judgment and decree dated 11.02.1992 being pleaded and proved on record from the side of appellants/plaintiffs in the present suit, except raising a plea of fraud about its execution in the written statement, the same was never established on record by the respondents/defendants. In such circumstances, the decree dated 11.02.1992 (Ex.P1) passed in Civil Suit No.715 of 1991 in favour of plaintiffs, their father (Sajjan Singh) was left with no right, title or interest in the suit property for the purposes of alienating the same in favour of his daughters through execution of release deeds No.1072 and No.1073 dated 23.07.2009 and the same were, thus, rightly held to be illegal, null and void and not binding upon the rights of plaintiffs. Furthermore, in the humble opinion of this Court, there is no merit in the contention raised on behalf of the appellant that once having filed Civil Suit No.1300 of 2009 seeking similar relief and having withdrawn the same before the Lok Adalat in terms of order dated 07.08.2010, the second suit was not maintainable. In this regard, it may be pointed out here that a perusal of the order dated 07.08.2010 passed by the Lok Adalat-cum-Civil Judge (Junior Division), Bhiwani, shows that the first suit was withdrawn by plaintiffs No.2 and 3 in terms of some settlement arrived at between the parties as well as upon recording of a joint statement by parties. Although, a defence has been pleaded in the written statement by the defendants that the compromise was a result of coercion and misrepresentation, however, neither any detailed particulars in this regard were ever pleaded nor any such issue about fraud was ever pressed and still further, both the Courts below recorded a concurrent finding of fact that the



plea of fraud was never established by the defendants. In such circumstances, the appellants/defendants having admitted the factum of settlement and having failed to prove any fraud as pleaded were not entitled to raise objection about the maintainability of the suit.

9. As regards the plea that suit filed at the instance of the plaintiffs was barred by limitation, it may be pointed out here that the declaration qua ownership was not only sought on the basis of judgment and decree dated 11.02.1992, but the necessity of seeking such a declaration arose in favour of plaintiffs only after the suit land was alienated in favour of defendants No.2 and 4 by defendant No.1 in terms of release deed No.1072 dated 23.07.2009 and release deed No.1073 dated 23.07.2009 respectively, followed by return release deed No.3739 dated 05.12.2011 and thus, the suit filed on 27.07.2013 cannot be said to be barred by limitation, the same being within 03 years from the release deed No.3739 dated 05.12.2011. Besides it, the plea raised on behalf of the appellant while relying upon amended provisions of Section 6 of the Act claiming herself to be co-parcener having right in the co-parcenary property is devoid of merits as the alienation made by defendant No.1 i.e. father of the parties namely Sajjan Singh by virtue of judgment and decree dated 11.02.1992 in favour of respondents/plaintiffs was much prior to 20.12.2004 and was thus protected in terms of proviso to sub-Section (1) of Section 6 of the Act.

10. Resultantly, in view of the detailed discussion made hereinabove, finding no illegality or perversity in the findings recorded by both the Courts below, there being no overlooking of the material on record,



re-appreciation of pleadings and the evidence being impermissible, the present appeal being devoid of merits is hereby dismissed.

11. All pending applications, if any, stand disposed of.

JULY 17, 2024
d.gulati

(HARKESH MANUJA)
JUDGE

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