

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA-3648-2013 (O&M)

Date of Decision : 15.01.2024

JARNAIL KAUR & ORS

.... Appellants

VERSUS

JARNAIL SINGH & ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Binderjit Singh, Advocate for the appellants.

Mr. P.K. Ganga, Advocate for respondents No.1 to 10.

ALKA SARIN, J. (ORAL)

1. The present Regular Second Appeal (RSA) has been preferred by the plaintiff-appellants challenging the judgments and decrees dated 03.02.2011 and 14.05.2013 passed by the Trial Court and the First Appellate Court respectively.

2. The brief facts relevant to the present *lis* are that previously Gajjan Singh son of Bhuriya son of Tirlok Singh was the owner in possession of the suit property as detailed and described in the heading of the plaint. He was the elder brother of father of plaintiff-appellants No.1 to 3 and proforma defendants No.8 and 9 (respondents No.11 and 12 herein) and proforma defendant No.10 (respondent No.13 herein) is the grandson of the brother of Gajjan Singh. Gajjan Singh was unmarried and had no issue, male or female. Since the plaintiffs and proforma defendants were serving Gajjan Singh with love and affection, who was their relative, Gajjan Singh gave the suit property to the plaintiff-appellants and proforma defendants in a family

settlement which took place. It is further averred that the possession of the suit property was also delivered to the plaintiff-appellants and proforma defendants by Gajjan Singh. It is further the case that a case was instituted being Civil Suit No.107 of 1996. In that Gajjan Singh appeared through his counsel on 19.01.1996 and filed written statement in Court on 19.01.1996 and admitted the family settlement between the plaintiffs and proforma defendants therein on one side and Gajjan Singh on the other side. The said suit was decreed on 30.04.1996. A Will dated 31.01.1986 was propounded by the defendants-respondents. It was further averred that the judgment and decree dated 30.04.1996 was challenged by the defendant-respondents on the ground of fraud, impersonation and forgery and a Will dated 31.01.1986 was also set up by them. The judgment and decree in the said suit filed by the defendant-respondents (being Civil Suit No.103 of 1996) (Exhibit P-6) was decreed on 08.02.2003. In the present suit the challenge was to the judgment and decree dated 08.02.2003.

3. On notice, the defendant-respondents filed their written statement and took the plea that the suit was barred as judgment and decree dated 08.02.2003 had become final between the parties.

4. On the basis of the pleadings of the parties, the following issues were framed :

- (i) Whether the plaintiffs are entitled for declaration as prayed for in the plaint ? OPP
- (ii) Whether the plaintiffs are entitled for permanent injunction as prayed for in the plaint ? OPP

(iii) Whether the suit of the plaintiffs is not maintainable in the present form ? OPD

(iv) Relief.

5. The Trial Court vide judgment and decree dated 03.02.2011 dismissed the suit of the plaintiff-appellants holding that the plaintiff-appellants have failed to prove that the judgment and decree dated 08.02.2003 was not legal and binding and they also failed to prove their possession. Aggrieved by the said judgment and decree an appeal was preferred which also came to be dismissed. Hence, the present Regular Second Appeal.

6. Learned counsel for the plaintiff-appellants has contended that there was no finding in the earlier judgment and decree dated 08.02.2003 that the judgment and decree of 30.04.1996 was obtained by fraud and hence the present suit ought not to have been dismissed by the Courts below.

7. Per contra, the learned counsel on behalf of the respondents has contended that a binding judgment and decree was passed by the competent Court on 08.02.2003 which was never challenged by the plaintiff-appellants and that by way of the present suit they have sought to challenge the said judgment and decree which was passed after hearing the parties.

8. Heard.

9. In the present case the challenge is to the judgment and decree dated 08.02.2003. In the said judgment and decree the plaintiff-appellants herein were defendants. They had contested the suit on merits and a finding was returned holding that the judgment and decree dated 30.04.1996 was not based on pre-existing rights and hence required compulsory registration and since the impugned judgment and decree had not been registered, the same

was not binding on the rights of the plaintiffs and the defendants. The said judgment and decree was never challenged by the plaintiff-appellants herein and instead the present suit was filed in the year 2006. Both the Courts below have concurrently found that the suit was barred by the principle of *res judicata*. Learned counsel for the plaintiff-appellants has not been able to convince this Court that a separate suit was maintainable for challenging the judgment and decree dated 08.02.2003 in view of the fact that the plaintiff-appellants herein had contested the suit and the judgment and decree was passed in their presence. The only option with the plaintiff-appellants was to file an appeal in that suit which they choose not to prefer.

10. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises for determination in the present case. The present Regular Second Appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

15.01.2024

Aman Jain

(ALKA SARIN)

JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO*