



RSA-5287 of 2018 (O&M)

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

RSA-5287 of 2018 (O&M)

Decided on: 27.08.2024

Anita Rani and others

...Appellants

Versus

Raj Rani and another

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. P.K.S.Phoolka, Advocate
for the appellants.

RITU TAGORE, J.

1. Appellants-plaintiffs, preferred this appeal against the judgment and decree dated 13.03.2018 passed by the learned Additional District Judge, Bathinda, whereby the appeal preferred by them was dismissed, and appeal preferred by respondents Raj Rani and others was allowed, against the judgment and decree dated 05.05.2016, passed in Civil Suit No. 249 dated 19.07.2011 titled as 'Anita Rani and others Vs. Raj Rani and others' whereby learned trial Court partly decreed the suit for permanent injunction while dismissing the relief of declaration sought by the appellants-plaintiffs.

2. In this appeal, appellants-plaintiffs are seeking to set aside the judgments of both the Courts below and decree their suit throughout.

3. For easy reference, the parties to the *lis* shall be addressed as per their original status before the learned trial Court.



4. Brief facts which are relevant for decision of this appeal are that plaintiffs instituted a suit for declaration that they are owners in possession of the suit property, a residential house bearing MC No.27331, measuring 200 sq. yards, situated in street No.5, Hari Nagar, Lal Singh Basti, Bathinda, as depicted in the site plan and detailed in the head note of the plaint, being LR's of Maya Devi, widow of Mukand Lal and that defendants have no right and title in the house in dispute; further to declare the judgment and decree dated 28.01.1994, passed by the then Sub Judge II Class, Bathinda in Civil Suit No. 221 of 27.08.1993 as null and void, a result of fraud played by defendants No. 1 and 2 upon plaintiffs, and they are continuing to be owners in possession of the house in dispute. Further, prayed for a decree of permanent injunction, restraining defendants No. 1 and 2 from taking possession of the house in dispute, forcibly and to restrain them from alienating the house in dispute to any third person based on judgment and decree dated 28.01.1994.

5. According to the plaintiffs, Mukand Lal son of Munshi Ram (father-in-law of plaintiff No. 1 and grandfather of plaintiffs No. 2 to 5) was owner of the plot on which the house in dispute was constructed. Mukand Lal was married to Maya Devi and had two children, namely Usha Rani, the daughter, and Labh Chand (sic Singh) the son, from the said wedlock. Labh Chand, the husband of plaintiff No.1 and father of plaintiffs No. 2 to 5, died on 11.01.2010.

6. The plaintiffs further claimed that Mukand Lal sold the plot to his wife Maya Devi vide registered sale deed No. 3199 dated 08.07.1981 and Maya Devi became absolute owner in possession of disputed property. After



the death of Maya Devi, Labh Chand, husband of plaintiff No.1 became absolute owner, who constructed the house in question. After the death of Labh Chand, plaintiffs became owner of the house in dispute being the only LRs of Labh Chand. It is claimed that defendants have no concern or relation with Mukand Lal son of Munshi Ram. Neither defendant No.1 is widow of Mukand Lal, nor defendant No.2 is the biological daughter of Mukand Lal. In fact, name of defendant No.1 is Raj Rani, and she wrongfully and illegally claimed herself to be Maya Devi, wife of Mukand Lal, who had already died long ago. Defendant No.1 was brought by Maya Devi and Mukand Lal in the house as a house maid. Defendant No.2 is daughter of defendant No.1. Defendant No.1 fraudulently and by impersonating as Maya Devi, suffered a collusive decree in favour of defendant No.2, regarding the house in dispute vide judgment and decree dated 28.01.1994, alleging herself to be the wife of Mukand Lal and defendant No.2 as daughter of Mukand Lal, pleading false and wrong facts regarding the legal heirs of Mukand Lal. The plaintiffs also claimed that possession of the house in dispute was not transferred to defendant No.2 based on the judgment and decree dated 28.01.1994. The plaintiffs remained in possession of suit property and came to know of passing of the judgment and decree dated 28.01.1994, when defendants made false complaint against them. On these material assertions, plaintiffs filed the extant suit for declaration and permanent injunction.

7. Upon being put to notice, defendants appeared and filed the written statement, and defendant no.1 claimed herself to be the wife of Mukand Lal, who died on 09.10.1982, leaving behind three children,



namely, Usha Rani, Labh Chand (both deceased) and Shashi Bala, defendant No.2. Mukand Lal, owner of the house in dispute, transferred ownership of the house in her favour through a registered sale deed and also executed a Will dated 09.11.1977, in her favor, regarding his entire estate. In a family settlement, house in question was given to defendant No.2 and Labh Chand was fully aware of this settlement. He, being a greedy person, attempted to take forcible possession and even assaulted defendant No.1 and an FIR No. 214, dated 09.11.2011 was registered against the plaintiffs. It is alleged that based on forged sale deed No.730 dated 23.04.1981 the plaintiffs got entered their names as owner of the house in dispute in municipal records, regarding which an inquiry is pending before the police on the complaint made by defendant No.1. It is claimed by defendant No.1 that she is legally wedded wife of Mukand Lal, and defendant no.2 is the daughter of Mukand Lal. Defendant No.1 denied that she illegally suffered the judgment and decree dated 28.01.1994 in favour of defendant No.2. It is alleged that plaintiffs forcibly and illegally dispossessed defendant No.2 from the house in dispute. By denying the claim of the plaintiffs, defendants prayed for dismissal of the suit of the plaintiffs.

8. Defendant No.3, DSP Bathinda, remained *ex-parte* before the learned trial Court. The plaintiffs did not file any replication, to the assertions of the defendants. Since the parties were at variance, the learned trial Court framed the following issues: -

“1. Whether plaintiffs are entitled to declaration as prayed for?

OPP.



2. *Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
3. *Whether the plaintiffs have got no locus standi or cause of action to file this suit? OPD*
4. *Whether this suit is maintainable in the present form? OPP*
5. *Relief.”*

9. In order to prove their case, the plaintiff, Inderjit Kumar appeared as PW-1 and Anita Rani appeared as PW-5, both reiterated the version of their plaint. To support their version, plaintiffs examined Pritam Singh (PW-2), who after tendering his affidavit (Ex. PW2/A) did not appear for his cross-examination, therefore, his statement cannot be considered. Rajinder Kumar Gupta, Draftsman (PW-3), prepared the site plan (Ex. PW3/A) of the disputed house. Vipran, Assistant Record Keeper (PW-4), tendered on record, the copy of plaint of Civil Suit No. 221 dated 27.08.1993 titled ‘Shashi Bala Vs. Maya Devi’ (Ex.PW4/A); written statement filed in above suit (Ex.PW4/B) and the judgment and decree sheet passed in the above-said suit (Ex.PW4/C and Ex. PW4/D), respectively. To rebut the version of the plaintiffs, the defendant Maya Devi @ Raj Rani appeared as DW-1 and testified as per her written statement.

10. The learned trial Court, on appraisal of evidence, partly decreed the suit of plaintiffs, restraining the defendants from dispossessing the plaintiffs from the house in dispute except in due course of law. However, dismissed the suit of plaintiffs for declaration and held defendant No.2 as absolute owner of the suit property, based on judgment and decree dated 28.01.1994 validly suffered by defendant No. 1 in favor of defendant No. 2.



11. Being dissatisfied with the judgment and decree, passed by the learned trial Court, both the plaintiffs and defendants preferred the appeals before the First Appellate Court.

12. Learned First Appellate Court, on reappraisal of the evidence, dismissed the appeal filed by plaintiffs and accepted the appeal of the defendants by overturning the relief of injunction qua possession granted in favour of the plaintiffs.

13. Aggrieved by the judgments and decrees passed by both the Courts below, the plaintiffs filed this appeal.

14. Learned counsel for the appellants submits that judgments and decrees passed by the learned Courts below are against the facts and law and are based on surmises and conjunctures, therefore liable to be set aside.

15. Learned counsel submits that evidence of the plaintiffs was closed by Court order, as a result, plaintiffs were prevented from leading evidence, that materially prejudiced their rights in the suit. On this score, the judgments and decrees are liable to be set aside and the suit should be remanded for fresh decision, permitting the plaintiffs to lead evidence.

16. Learned counsel further submits that learned Courts below erred in declining the relief of declaration in favour of the plaintiffs, who otherwise, led ample and positive evidence proving that defendants have no concern with Mukand Lal, the father-in-law of plaintiff No.1 and grandfather of plaintiffs No. 2 to 5. The defendant No.1 is not the widow of deceased Mukand Lal. He never married her. Defendant No.2 is not the daughter of Mukand Lal. Defendant No.1 was brought as a house maid in the house by Mukand Lal and his wife Maya Devi. Maya Devi, wife of



Mukand Lal, had died long ago. The defendant No.1, by impersonating as Maya Devi, wife of Mukand Lal, fraudulently suffered decree dated 28.01.1994 in favour of defendant No.2, by alleging defendant No.2, as daughter of Mukand Lal. The learned counsel submits that plaintiffs (PW-1 and PW-5) pointedly deposed that defendants have no concern with Mukand Lal, and they are the only legal heirs of Mukand Lal and Maya Devi, who had two issues Labh Chand, husband of plaintiff No.1 and father of plaintiffs No. 2 to 5 and Usha Rani, both have died. Plaintiffs, being LR's of deceased Labh Chand son of Mukand Lal, are the owners of the disputed house. The defendants, by pleading wrong facts regarding the legal heirs of Mukand Lal, obtained judgment and decree dated 28.01.1994, Ex PW4/C. The decree is nullity, outcome of fraud.

17. The learned counsel submits that learned Courts below completely overlooked that the defendants pleaded contradictory facts in present case compared to those asserted in the earlier suit regarding the legal heirs of deceased Maya Devi and Mukand Lal and obtained a decree fraudulently. Furthermore, the decree was never disclosed before the filing of the present suit, and was also not implemented in the official records, and no possession was claimed from plaintiffs based on the decree. The learned counsel submits that both the learned Courts below failed to properly appreciate the evidence and erred in dismissing the suit of the plaintiffs, making out a substantial question of law. A prayer is made to allow the appeal.

18. I have heard learned counsel for the appellants and have gone through the record with his valuable assistance.



19. Insofar as the contention of learned counsel for the appellants regarding their claim of being prejudiced by the closure of their evidence is concerned, the same holds no substance as learned counsel failed to show to this Court that plaintiffs ever challenged the order of closure of their evidence by way of revision, review or re-call of the order, or ever by filing any application for additional evidence. In this appeal as well, no application has been filed for additional evidence, nor has it been pleaded in the grounds of appeal, what evidence was left to be examined or presented on their behalf. In view of the above, it cannot be held that plaintiffs intended to present more evidence but were prevented from doing so, or that they were seriously prejudiced in fully presenting their case, as they now claim. Therefore, a case for remand and a fresh decision, is not made out.

20. Now, dealing with the merits of the appeal, both the Courts below, declined to grant the plaintiffs relief of declaration, holding that they failed to establish the core allegation that, defendant No.1 was never married to Mukand Lal, and defendant No.1 is not Maya Devi, the widow of Mukand Lal, but she is Raj Rani, and defendant No.2 is not the biological daughter of Mukand Lal. Furthermore, defendant No.1 was the house maid brought by Mukand Lal. Both the learned Courts below rightly observed that in order to earn the relief, the plaintiffs are required to lead positive and reliable evidence so as to tilt the balance of preponderance of probability in their favour, and plaintiffs cannot take advantage of weakness or absence of a case from the defendant(s).

21. Here in the present case, the plaintiffs led no independent and reliable evidence, aside from their self-serving version, to establish that



defendant No.1 is not Maya Devi, widow of Mukand Lal, but an imposter. The learned Courts below rightly noted that plaintiffs failed to place on record, the death certificate, a definite and reliable piece of evidence, to prove that Maya Devi, widow of Mukand Lal, mother-in-law of plaintiff No.1 and grandmother of plaintiffs No. 2 to 5 had died long ago. So much so, no date of death of Maya Devi is mentioned in the plaint, by the plaintiffs to establish that Maya Devi died on specific date, day, month and year.

22. The learned Courts below also rightly noted the infirmity in the testimonial account of the plaintiffs [Inderjit Kumar (PW-1) and Anita Rani (PW-5)], who both during their cross-examination admitted that they have not attached the death certificate of Maya Devi with the plaint. Inderjit Kumar (PW-1), also expressed his inability to produce the death certificate of Maya Devi, but did present the death certificate of Mukand Lal as (Ex.D1). Furthermore, Anita Rani (PW-5) could tell the year of death of her father-in-law Mukand Lal, deposing that he died in the year 1982 and her husband Labh Chand in the year 2010, but could not tell the year of death of her mother-in-law, Maya Devi. This inconsistent and unnatural conduct on part of the plaintiffs, who claimed to be legal heirs of deceased Maya Devi, has been rightly noticed by the Courts below.

23. The learned Courts below also noted that plaintiffs failed to produce any other oral evidence of their relatives, friends and persons from neighborhood, who attended the cremation of Maya Devi. Such witnesses could have been ideal for testifying about the death of Maya Devi, the status of defendant No.1 in the household and about the legal heirs of Maya Devi



and Mukand Lal. No evidence was brought on record to show that death of Maya Devi was notified in the municipal record or other official records, or the disputed property was transferred in the name of Labh Singh as the legal heir of Maya Devi. Additionally, the plaintiffs did not place on record any photograph or ration card etc. to show that defendant No.1 is not the wife of Mukand Lal, but another lady named Raj Rani. The Courts below rightly noticed these material infirmities in the evidence of the plaintiffs and rightly concluded that plaintiffs failed to establish that defendant No.1 is not the widow of Mukand Lal, and she is Raj Rani, not Maya Devi, and that Maya Devi, mother of deceased Labh Chand son of Mukand Lal had already died and defendant No.1 is the house maid, who was brought by Mukand Lal.

24. The plaintiffs do not dispute that Maya Devi widow of Mukand Lal was the owner of the land/plot measuring 200 sq. yards on which disputed house is situated, was initially owned by Mukand Lal, who had sold the same to Maya Devi vide sale deed No. 3199 dated 08.07.1981. The plaintiffs admit Maya Devi wife of Mukand Lal to be absolute owner of the plot. The plaintiffs asserted that Labh Singh constructed the house in dispute on the plot but presented no evidence in this regard. However, the existence of a house is not disputed by the parties.

25. Once the plaintiffs fail to establish the death of Maya Devi, consequently, their claim of ownership on the disputed house through inheritance also goes. As a result, the question of inheritance of Maya Devi does not arise. The plaintiffs, therefore, fail to establish their ownership on the disputed house by way of inheritance. Learned Appellate Court rightly observed this and also rightly concluded that plaintiffs could not prove their



claim of fraud, allegedly committed by defendant No.1 and defendant No.2, in obtaining the judgment and decree dated 28.01.1994 (Ex.PW-4/C) by impersonation. The defendant No.1 Maya Devi appeared as DW-1, testified her version as contained in the written statement. Although, the defendant No.1 admitted in civil suit No.221 of 1993 (Ex.PW4/A), that defendant No.2, was her only child. However, this admission does not affect the decree because defendant No.1, being the absolute owner, had the right to transfer the ownership of the house in dispute in favour of defendant No.2, to the exclusion of other children. The defendant No.1, while appearing as DW-1 did not dispute the judgment and decree (Ex.PW4/A) and passing of the title of the house in dispute to defendant No.2, under the decree. In view of the above, the learned Courts below have rightly declined the relief of declaration to the plaintiffs.

26. The learned Appellate Court has also rightly overturned the findings of learned trial Court regarding injunction relating to possession, by correctly observing the settled proposition of law that no injunction is maintainable against the true owner.

27. All these factors taken together, make no ground to form a different opinion to bring the findings of the learned Courts below within the realm of perversity.

28. For the reasons recorded above, I do not find any illegality or perversity in the concurrent findings, which are based on sound application of oral and documentary evidence. No ground for interference is made out much less involvement of any substantial question of law.

29. No other point urged.
30. Resultantly, there is no merit in the appeal and is, hereby,
dismissed.
31. Since the main case has been decided, pending miscellaneous
application(s), if any, are also disposed of accordingly.

(RITU TAGORE)

JUDGE

27.08.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No