

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-1108-2022 (O&M)**
Date of Decision: 03.03.2025**JARNAIL SINGH AND ANOTHER****. . . .APPELLANTS****Vs.****BALWANT SINGH AND ANOTHER****. . . . RESPONDENTS****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA****Present:- Mr. R.S. Chauhan, Advocate, for the appellants.****DEEPAK GUPTA, J.**

Plaintiffs are before this Court in the present Regular Second Appeal against the concurrent findings of the Courts below. Plaintiffs sought declaration to the effect that they along with defendant No.2 are owners in possession of the suit land and that judgment & decree dated 09.02.2007 passed in an earlier litigation was null and void and the result of fraud. They further sought declaration that sale deed dated 08.03.2011 was also null and void and not binding upon their legal rights. They further prayed for decree of permanent injunction to restrain defendant No.1 (*respondent No.1 herein*) from interfering in their possession or to dispossess them.

2. Defendant No.1 opposed the claim of the plaintiffs. One of the grounds raised by him was that matter in controversy had already been decided vide judgment dated 09.02.2007 and even the appeal filed by the plaintiffs was dismissed by the Appellate Court and the further appeal filed before this High Court was also dismissed.

3. After framing issues and taking evidence produced by the parties, the trial Court dismissed the suit on 23.01.2019. The appeal filed by two of the plaintiffs against the aforesaid judgment of the trial Court was dismissed by the

First Appellate Court on 23.02.2022, thus endorsing the findings of the trial Court.

4. The only contention raised by learned counsel for the appellants before Court is that evidence on record has not been properly appreciated by the Courts below.

5. After hearing Id. counsel for the appellants at length and appraising of the paper-book, this Court does not find any merit. It will be relevant to reproduce observations made by the First Appellate Court regarding the matter in controversy: -

“21. By virtue of present suit, appellants-plaintiffs crave for decree, dated 09.02.2007, passed by the court of the then Civil Judge, Junior Division, Patti, to be declared as nullity on the ground of fraud. The present suit has been filed on 01.06.2013. Whereas not only the same is time barred on the very face of it, as appellants-plaintiffs themselves being party to judgment and decree dated 09.02.2007 now seek declaration about the said judgment being result of fraud, appellants-plaintiffs, very conveniently, have failed to plead that the first appeal, filed by them against judgment and decree dated 09.02.2007, has been dismissed by the court of learned Additional District Judge, Tarn Tarn, vide judgment dated 07.08.2009 and the RSA filed by appellants-plaintiffs No.1 and 2 has been dismissed by Hon'ble High Court, vide judgment dated 26.09.2011, thereby, upholding the agreement to sell, dated 06.12.2003, purported to have been executed by the father of appellants-plaintiffs in favour of defendant No.1. Not only the said concealment of the judgments passed by First Appellate Court and Hon'ble High Court is deliberate omission on the part of appellants-plaintiffs, the fact that appellants-plaintiffs have the cheek to still assert their right, title and interest over the suit property and to challenge sale deed dated 08.03.2011, executed through the Executing court, in favour of respondent-defendant No.1 speaks volumes of the adamant stand of appellants-plaintiffs, who refuse to accept the finality of judgment against them and have tried to reopen the matter, which has already been decided conclusively between the parties.

22. In this backdrop, therefore, now any attempt on the part of appellants-plaintiffs to produce additional evidence in support of their contention that the agreement to sell, dated 06.12.2013, executed by their father Jugraj Singh is not valid agreement, on what so ever ground being taken by appellants-plaintiffs, cannot be entertained. Neither the sale deeds, purported to have been executed by Jugraj Singh and proposed to be brought can record, to make the agreement to sell, dated 06.12.2013, in favour of defendant No.1 suspicious document nor the affidavit affirmed by defendant No.1 can be allowed as the execution of agreement to sell, dated 06.12.2013, in favour of defendant No.1 has been upheld up to Hon'ble High Court. The sale deed, on the basis of said agreement to sell, has since been executed in favour of defendant No.1 in the Execution filed by defendant No.1, pursuant to which, vide Rapat No.607 dated 5-June-2014, Ex.D9, the possession of the property in question has been delivered to defendant No.1. Defendant No.1 is now reflected to be owner in possession of suit property vide Mutation No.21473.

23. Thus, whereas no ground is made out to allow the application under Order 41 Rule 27 CPC and under Section 151 CPC filed by appellants-plaintiffs for producing additional evidence, even the appeal filed by appellants-plaintiffs is found to be sans merits and gross abuse of process of law. Appellants-plaintiffs have not only concealed material facts from the court, they have tried to mislead the court and challenge a judgment, which has attained finality up to Hon'ble High Court. The appellants-plaintiffs have tried to reopen a lis, which has been conclusively adjudicated against them. Appellants-plaintiffs have failed to detail the nature of fraud committed with the court by defendant No.1, so as to make out ground for assailing judgment and decree, dated 23.01.2019, which has since become final.

24. There is no denying the fact that present entire lis is an abuse of process of law by appellants-plaintiffs, who apparently were either not given proper legal advice or despite the advice, opted to proceed with the litigation at their peril. The suit filed by appellants-plaintiffs being misconceived, the having no merit, at all and aimed at circumventing the finality of judgment passed by Hon'ble High Court is not maintainable and no interference in the findings on issues No.1, 1(a) to 1(c) and issue No.3 is called for."

6. It is thus clear from the aforesaid findings recorded by the First Appellate Court that plaintiffs have assailed the judgment & decree dated 09.02.2007 passed by the Court, to be nullity on the ground of fraud by filing the present suit on 01.06.2013. Thus, the suit is clearly barred by limitation. Not only this, it was found that plaintiffs’ themselves were party to the earlier litigation and the suit filed by them had been dismissed. Even the appeal filed by them was dismissed by the First Appellate Court on 07.08.2009 and then the Regular Second Appeal filed by them was dismissed by this High Court on 26.09.2011, thus upholding the agreement to sell dated 06.12.2003 purported to have been executed by the father of the plaintiffs in favour of respondent No.1.

7. In view of the aforesaid factual position, emerging from the evidence on record, this Court does not find any reason whatsoever to interfere in the concurrent findings recorded by the Courts below. There is neither any illegality nor perversity in appreciating the evidence on record. Holding the present appeal to be devoid of any merit, the same is hereby dismissed.

03.03.2025

Vivek

(DEEPAK GUPTA)
JUDGE

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