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Court : Punjab and Haryana

Decided On : Aug-07-2014

Appellant : “1. Whether the Impugned Judgement/Decree

Respondent : Jitender and Others --respondents

Judgement :

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH Rs.No.863 of 2012 (O&M) Date of Decision: 07.08.2014.

Rameshwar --Appellant Versus Jitender & others --Respondents CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr.Mani Ram Verma, Advocate for the appellant.

*** TEJINDER SINGH DHINDSA.J The plaintiff-appellant is in second appeal before this Court having remained unsuccessful in both the courts below.

Brief facts are that the plaintiff Rameshwar instituted the suit seeking decree of declaration to the effect that judgement and decree dated 25.8.1994 in Civil Suit No.424 dated 1.6.1994, passed by the Sub Judge Ist Class, Charkhi Dadri and the resultant mutation no.1425 dated 15.6.1995 relating to land to the extent of 4 biswas i.e.1/8th share are illegal, result of fraud and misrepresentation and thus liable to be set aside.

Case of the plaintiff was that he and defendant no.2 namely Karan Singh were real brothers and as such, property in question was part of Joint Hindu Family property.

It was further pleaded that defendant no.1 i.e.Suraj Bhan was having no family relation with Karan Singh, yet, Karan Singh had transferred his 1/8th share on the strength of judgement and decree dated 25.8.1994 in favour of defendant no.1 Suraj Bhan.

Case set up on behalf of the plaintiff was that Karan Singh, defendant no.2 was not competent to transfer his share without legal necessity in favour of defendant no.1 without impleading other coparceners to Joint Hindu Family property.

It Lucky 2014.08.21 10:34 I attest to the accuracy and integrity of this document chandigarh Rs.No.863 of 2012 (O&M) -2- was claimed on behalf of the plaintiff that a collusive decree had been procured by way of concealment and fraud and defendant no.1 Suraj Bhan was neither having a pre-existing right in the property nor defendant no.2 Karan Singh had received any land in exchange.

Accordingly, it was prayed that defendant no.1 got mutation no.1425 dated 15.6.1995 on the basis of a collusive decree which is also illegal and deserves to be set aside.

Suit was contested and separate written statements were filed by defendants no.1 and 2.

Defendant no.2 Karan Singh took a stand that even though, plaintiff was his real brother but a mutual partition had already been arrived at between them and their brother Hari Singh and as per such partition the brothers were exclusive owners in possession of their share and as such defendant Karan Singh could sell or transfer his land to anyone and could even get land by way of exchange to his own benefit.

Defendant no.2 also took a specific stand that he had transferred his land in favour of defendant no.1 Suraj Bhan in exchange as he had taken some land from defendant no.1 adjoining his tube well and which was more beneficial to him.

Defendant no.1 filed written statement stating that defendant no.2 was owner in possession of the suit land which was transferred on the basis of consent decree dated 25.8.1994 and since then he is owner in possession of such property upon which residential house had been constructed.

Upon the pleadings of the parties, the following issues were struck by the Trial Court:- 1.

Whether the impugned judgement/decree dated 25.8.94 and its consequent impugned mutation dated 15.6.95 are illegal, null and void on the grounds taken in the Rs.No.863 of 2012 (O&M) -3- plaint?.OPP2 If issue no.1 is proved, whether the plaintiff is entitled for declaration on the grounds taken in the plaint?.OPP3 Whether suit is false and frivolous?.OPD4 Whether plaintiff has no locus-standi to file the present suit?.OPD5 Whether suit is not maintainable in the present form?.OPD6 Whether plaintiff has not come to the Court with clean hands?.OPD7 Whether plaintiff is estopped by his own act and conduct to file the present suit.OPD8 Relief.

Vide judgement dated 14.3.2011 the Addl.

Civil Judge (Sr.Divn.).Charkhi Dadri dismissed the suit filed by the plaintiff.

Being dissatisfied, plaintiff-appellant preferred civil appeal and the same has also been dismissed by the Additional District Judge, Bhiwani vide judgement dated 5.10.2011.

Resultantly, plaintiff-appellant is in second appeal before this Court.

Having heard learned counsel for the appellant at length, this Court is of the considered view that the present appeal deserves dismissal.

Upon due appreciation of evidence adduced on record, both the courts below have taken a concurrent view that the plaintiff-appellant has failed to establish any ingredient of fraud or misrepresentation while passing of the decree dated 25.8.1994 and defendant no.2 Karan Singh had himself admitted as regards

having suffered a consent decree in favour of Suraj Bhan.

Further concurrent finding recorded is that defendant no.2 had received land in exchange from defendant no.1 to his advantage and convenience.

The courts below have further held that no evidence was led by the plaintiff as regards the suit land being part of a Joint Hindu Family Rs.No.863 of 2012 (O&M) -4- property.

Accordingly, a view was taken that it would be open for the plaintiff-appellant to seek remedy by way of partition as regards his share, if, the property was joint.

Such findings have been recorded on valid and cogent reasoning.

The same would not warrant any interference by this Court in second appeal while exercising jurisdiction under Section 100 of the Code of Civil Procedure.

No question of law much less substantial question of law arises for consideration.

Appeal dismissed.

(TEJINDER SINGH DHINDSA) JUDGE August 07, 2014.

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