

Punjab-Haryana High Court

Satnam Singh vs Sarwan Singh And Another on 27 October, 2009

RSA No.377 of 2005

1

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

R.S.A. No. 377 of 2005

Date of Decision: October 27, 2009

Satnam Singh

.....Appellant

Versus

Sarwan Singh and another

.....Respondent

Coram: Hon'ble Mrs. Justice Sabina

Present: Mr. Rakesh Chopra, Advocate for the appellant.
Mr. Samir Rathore, Advocate for
Mr. Sumeet Goel, Advocate for respondent No.1

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Sabina, J.

Plaintiff-Satnam Singh filed a suit for declaration to the effect that the decree and judgment passed in Civil Suit No.275 of 4.9.1987 decided on 1.4.1991 by the Additional Senior Sub Judge, Ropar in the suit titled as `Sarwan Singh (now defendant No.1) vs. Sohan Singh (now defendant No.2)' for possession by way of specific performance in respect of land measuring 6k-13M out of the land mentioned at letter X below is illegal null and void. The suit of the plaintiff was dismissed by the Additional Civil Judge (Senior Division) Ropar vide judgment and decree dated 3.6.2002. Aggrieved by the same, the plaintiff filed an appeal which was dismissed by the Additional District Judge, Rupnagar vide judgment and decree dated 8.9.2004. Hence, the present appeal by the plaintiff.

The facts of the case, as noticed by the Additional District Judge in paras 2 and 3 of its judgment, read as under:-

" 2. The case of the plaintiff as pleaded in the plaint is that plaintiff Satnam Singh is minor and her mother Parkash Kaur is his next friend and she has got no interest adverse to that of minor. It is further pleaded that plaintiff and defendant No.2 constituted Joint Hindu Family. The suit property was inherited by defendant No.2

from his father Pritam Singh who inherited the same from his father Chattar Singh and Chattar Singh inherited the same from his father Daya Singh. The plaintiff being coparcener has got right in the suit property since his birth. Defendant No.1 (wrongly written as defendant No.3) filed suit for specific performance of agreement to sell dated 14.6.1987 against defendant No. 2 having Civil suit No.275 of 4.9.1987. The said suit was decreed by the Court of Additional Senior Sub Judge, Ropar on 1.4.1991 and the appeal filed against the said judgment and decree by defendant No.2 as well as regular Second Appeal filed by defendant No.2, were dismissed. It is further pleaded that defendant No.2 had got no legal necessity to dispose of the land in question by executing agreement to sell dated 14.6.1987 in favour of defendant No.1. That, thus, defendant No.2 had got no right to dispose of the Joint Hindu Family Coparcenary Property. That defendant No.2 had acted against the interest of minor plaintiff. The above stated agreement to sell was not executed for the benefit of the estate. That plaintiff has come to know that defendant No.1 has already filed execution application to get executed the above stated judgment and decree. That the said judgment and decree are illegal, null and void and are not binding on plaintiff. Hence, the suit.

3.The suit was contested by defendant No.1 who filed written statement taking preliminary objections that the plaintiff has got no locus standi to file the suit. That the suit is not maintainable and is time barred and plaintiff is estopped by his act and conduct from filing the suit. On merits, it is denied that plaintiff and defendant No.2 constituted Joint Hindu Family. It is also denied that suit property was ancestral property in the hands of defendant No. 2. It is pleaded that defendant No.2 executed an agreement to sell dated 14.6.1987 for the welfare of his family. That answering defendant has become owner and in possession of the suit property on the basis of judgment and decree dated 1.4.1991 passed by the Court of Ld. Addl. Senior Sub Judge, Ropar. The said judgment and decree have already attained finality. The sale deed has already been executed in favour of answering defendant by the Civil Court on 7.10.1997 regarding suit land. The plaintiff has got no right, title or interest in the suit property. It is further pleaded that sale deed dated 7.10.1997 is valid and is binding on the plaintiff. The other averments of the plaint were denied being wrong and it was pleaded that the suit be dismissed."

On the pleadings of the parties, the following issues were framed by the trial Court:-

- "1. Whether the judgment and decree dated 1.4.1991 is null and void and not binding on the rights of the plaintiff?OPP
- 2.Whether the plaintiff has no locus standi to file the present suit?OPD
3. Whether the suit is time barred?OPD

4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
5. Whether the defendants are entitled to special costs under Section 35-A CPC? OPD
6. Whether the plaintiff is entitled to the declaration as prayed for? OPP
7. Relief."

After hearing the learned counsel for the parties, I am of the opinion that the present appeal deserves to be dismissed.

Sohan Singh executed an agreement to sell the land in question with respondent No.1 Sarwan Singh on 14.6.1987. Rupees Six thousand were paid as an earnest money by defendant No.1 to defendant No.2. Defendant No.1 filed a suit for possession by way of specific performance of the agreement to sell in question and the said suit was decreed by the trial Court vide judgment and decree dated 1.4.1991. The appeal filed against the said judgment and decree was dismissed. The regular second appeal filed against the decision of the lower appellate Court was dismissed by this Court. Thus, the judgment and decree dated 1.4.1991 were upheld by the higher Courts and attained finality. The sale deed has been executed in favour of defendant No. 1 in pursuance of the decision of the Civil Court. Defendant No.1 is in possession of the suit land on the basis of the execution of the sale deed by the Court in his favour. Moreover, defendant No.1 was a bona fide purchaser of the suit land for consideration. Mutation qua the suit land was sanctioned in favour of defendant No.2 and his brother on the basis of a Will executed by their father Pritam Singh. The agreement to sell was executed by defendant No.2 in favour of defendant No.1 on 14.6.1987, whereas, the plaintiff was born on 26.9.1988. In these circumstances, the Courts below had rightly dismissed the suit of the plaintiff.

No substantial question of law arises in this regular second appeal which would warrant interference by this Court. Accordingly, this appeal is dismissed.

(Sabina) Judge October 27, 2009 arya