

(2010) 05 SHI CK 0143
In the High Court Of Himachal Pradesh

Amar Nath

APPELLANT

Vs

Tarsem Lal

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Contract Act, 1872 — Section 23
Transfer of Property Act, 1882 — Section 10

Citation : (2010) 05 SHI CK 0143

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—The plaintiff has come in appeal against judgment, decree dated 29.2.2000 passed by learned District Judge, Una in Civil Appeal No. 84/1996 of 1999, affirming judgment, decree dated 30.4.1996 passed by learned Sub Judge Ist Class, Court No. 2, Una in Case No. 50/90.

2. The facts in brief are that the appellant had filed a suit for declaration to the effect that judgment, decree dated 2.12.1989 passed in Civil Suit No. 202/89 by learned Senior Sub Judge, Una that the plaintiff in that suit shall not dispose of the plots during the life time is null and void and statements of appellant and respondent herein are contrary to law and conditions imposed by learned Senior Sub Judge in the decree have no effect on the rights, title and interest of the appellant. It has been alleged that judgment, decree dated 2.12.1989 has jeopardized the right of the appellant as the conditions imposed are unlawful.

3. The suit was contested by respondent by filing written statement wherein preliminary objections with respect to maintainability of the suit was taken, the plea of lack of cause of action, resjudicata and suit is barred under Order 2 Rule 2 CPC and estoppel were also taken. On merits, the respondent has supported the decree, judgment passed in previous suit. The appellant had filed replication and reasserted his case. On the pleadings of the parties the following issues were

framed:

1. Whether the judgment and decree dated 2.12.1989 in Civil suit No. 202/89 Tarsem Lal v. Amar Nath passed by Senior Sub Judge, Una are null and void and contrary of law as alleged? ...OPP
2. Whether the suit is not maintainable ...OPD
- 3 Whether the suit is barred by principle of resjudicata? ...OPD
4. Whether the plaintiff is estopped from filing the suit by act and conduct as alleged? ...OPD
5. Relief.

The issues No. 1,3 were answered in negative and issues No. 2 and 4 were answered in affirmative and learned Sub Judge dismissed the suit on 30.4.1996. In appeal learned District Judge has affirmed the judgment, decree passed by learned Sub Judge. Hence, the plaintiff has come in second appeal which has been admitted on the following substantial questions of law:

Whether in view of the provisions of Rule 3 Order 23 C.P.C. and explanation thereto, could it be held that a compromise decree questioned in the suit is not liable to be set aside?

4. I have heard Mr. Ajay Sharma, learned Counsel for the appellant and have also gone through the record. The learned Counsel for the appellant has submitted that the two Courts below have erred in returning the finding that the suit is not maintainable under Order 23 CPC and explanation thereto. He has submitted that the condition imposed in the decree that the appellant will not sell the property during his life time is illegal and in contravention of Section 23 of the Contract Act and Section 10 of Transfer of Properties Act.

5. The compromise arrived at between the parties has merged in the decree which was passed by the Court in the earlier suit. The Rule 3A of Order 23 CPC provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The present suit was filed on the ground that compromise in the previous suit was unlawful. I have gone through the plaint and only ground of challenge to the previous decree is that said decree is against the spirit of law and is not sustainable. The previous decree has not been challenged on the ground of fraud etc.

6. In Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another, the appellant instead of adopting the procedure of filing an application in the Court who passed the compromise decree or filing the appeal had filed independent suit for challenging the compromise decree. The Supreme Court has held that a party challenging a compromise can file a petition under proviso to Rule of Order 23, or an appeal u/s 96(1) of the Code, in which he can now question the validity of the compromise in view of Rule 1A of Order 43 of the Code. The appellant had not filed such application, he has filed separate suit questioning the validity of decree

dated 2.12.1989 which in the facts and circumstances of the case is not maintainable. There is no merit in the appeal. The substantial question of law referred above is answered against the appellant.

7. No other point was urged.

8. The result of the above discussion, appeal fails and is accordingly dismissed with no order as to costs.