
(2013) 07 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1011 of 1992 (O and M)

State of Haryana and Another

APPELLANT

Vs

Babu Ram

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Citation : (2013) 07 P&H CK 0004

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Advocate : Aakanksha Sawhney, DAG, Haryana, for the Appellant; Ravinder Malik, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Garg, J.—As per the averments made, the plaintiff-respondent purchased the land measuring 2 bighas- 0 biswa comprised in Khasra No. 562/1 situated in village Chandraon Sub Tehsil Indri, Tehsil & District Karnal from appellant No. 2 on 04.03.1964 in an open auction for a consideration of Rs. 431/- which was paid on that very day and thus, the plaintiff-respondent has been in possession of the suit property and has become an owner of the land in dispute. It is the further case of the plaintiff that mutation No. 1725 was also sanctioned in his favour by the Assistant Collector Second Grade, Karnal on 14.9.1964. During the consolidation, the said khasra No. 526/1 has been changed to Khewat No. 124 Khatoni No. 134, Rect No. 28 Killa No. 25/2(2-18) Rect. No. 71, Killa No. 5 (0-5) situated in village Chandraon, Tehsil & District Karnal. According to plaintiff-respondent, previous to the aforesaid purchase, the plaintiff-respondent was in possession of the land in dispute as a gair marusi tenant as reflected in the jamabandi for the year 1964-65. It the case of the plaintiff-respondent that he is in interrupted possession of the land in dispute in the jamabandi for the year 1979-80. The entries have been made showing him as a tenant and in the ownership column as owner of the land in dispute. It is the case of the plaintiff-respondent that apart from this, the said wrong entries have

been made by the appellants as the plaintiff-respondent had purchased the said property in open auction on 04.03.1964 for a consideration of Rs. 431/- and thus, have acquired title of the property. However, in civil suit plaintiff-respondent also pleaded alternative plea that in case his ownership over the land in dispute is not proved, his title over the suit property being open, continuous and hostile, he has become owner in possession of the land in dispute by way of adverse possession. Defendant appeared and filed written statement controverting the claim of the plaintiff-respondent. Whereas, in the replication, the plaintiff-respondent has reasserted and reaffirmed the averments of the plaint. On the basis of the pleadings of the parties, the following issues were framed:-

1. Whether the entries made in the jamabandi for the year 1979-80 are wrong, if so, to what effect? OPP
2. Whether the suit is within limitation? OPP
3. Whether this Court has no jurisdiction to try the present suit? OPD
4. Whether the suit is barred by the principle of res-judicata? OPD
5. Relief.

2. Both the parties led evidence.

3. After hearing learned counsel for the parties, the trial Court decreed the suit of the plaintiff-respondent by deciding all the issues against the defendant-appellants.

4. Aggrieved from the judgment and decree of the trial Court, the appellant-defendants filed an appeal before the First Appellate Court. The said appeal was dismissed by the Additional District Judge, Karnal, vide order dated 23.11.1991. While dismissing the appeal, the First Appellate Court observed as under: -

My attention has been drawn towards document Ex. P2 which is a copy of the Naksha Haqdar Bar of village Chandro in which the name of Babu Ram plaintiff has been mentioned as in possession of the suit land. Central Govt. has been mentioned as the owner. Ex. P3 is the copy of the Khatoni Istemal in which Babu Ram has been shown to be in possession of the land comprised in khasra No. 526/1 and Central Govt. has been shown to be owner. Ex. D2 is the copy of mutation which has been sanctioned in favour of the plaintiff on 14.9.1964 of the land now in dispute. Ex. D3 is the copy of the jamabandi for the year 1964-65 in which it is mentioned that Babu Ram is in possession of the suit land because he has purchased the same. This factum is mentioned in Column No. 9 of Jamabandi. Ex. DW1/A is the copy of Khatoni Premaise which shows that in lieu of old numbers, the new number has been allotted which are now in dispute. In this manner from the documents produced it is quite clear that previously Babu Ram was in possession as a tenant but later on he purchased the suit land and therefore, it was mentioned in the revenue record that he is in possession as

owner and in lieu of the old number, new numbers were allotted after the consolidation of holdings. The lower court has rightly decided, issue No. 1 in favour of the plaintiff and the findings of the lower court on issue No. 1 are hereby affirmed.

The learned Public Prosecutor for the State has argued that the present suit is barred by the principles of res judicata because previously the plaintiff also filed a suit which was dismissed by the lower court on 2.5.87 and the appeal was also dismissed on 20.11.87. However, the defendant State did not place on record the copies of these two judgments. Moreover, Sh. P.K. Bhandari, counsel for plaintiff-respondent has argued that previous judgment was obtained by the defendant State by playing fraud because document Ex. DW1/A was not produced by the State in the previous suit. The lower court has come to the conclusion that the suit is not barred by the principles of res judicata because the previous judgment was based upon fraud. The lower court has referred to authority contained in AIR 1982 N.O.C. 233(B) decided by Gauhati High Court where it was observed that judgment obtained by fraud or collusion cannot operate as res judicata. In AIR 1980 N.O.C. 50 Guj, it was observed that decree obtained by practicing fraud is nullity." In the present case the defendants did not produce the judgment and decree of the previous suit and the reasons for the same remain unexplained. Therefore, in the absence of the judgment and decree, the suit cannot be said to be barred by the principles of res judicata. The lower court has rightly decided the issue of res judicata against the defendant. Thus, the lower court has rightly decided the controversy between the parties.

5. The State of Haryana has filed the instant appeal challenging the judgments and decrees of the Courts below.

6. It may be noticed that at the time of motion hearing, the appellants have relied upon the judgment dated 02.05.1987 of the civil Court passed in Civil Suit No. 297 of 1986 and Civil Appeal No. 48 of 1987, decided on 20th November, 1987 contending that the respondent had filed a suit earlier with regard to the subject matter in the suit and thus, the instant suit was hit by the principles of res judicata and the findings of the Courts below were liable to be set aside being perverted. The appellant-State also framed the following substantial question of law for consideration of this Court:-

- 1 Whether the suit filed by the plaintiff is barred by the principles of Res-judicata?
2. Whether the observation of the courts below that the previous judgment was obtained by defendants by fraud and misrepresentation in contrary to record?
3. Whether both the courts below could hold the plaintiff to be owner of suit property on the basis of single revenue entry?
4. Whether both the courts below have misread the evidence while deciding the suit of the plaintiff?
7. Learned counsel for the appellant-State has vehemently argued that the

Courts below have committed patent error while deciding issue No. 4 against the appellants and in favour of the plaintiff-respondent. The suit filed by the plaintiff was clearly barred by res judicata as he filed the civil suit No. 297 of 1986 on the same facts which was dismissed on 02.05.1987 and even appeal filed against the said order was also dismissed. It has been further argued on behalf of the appellant-State that there is nothing on record to hold that the previous judgment and decree of the Additional Senior Sub Judge, Karnal, passed in civil Suit No. 297 of 1986 was obtained by the appellants by fraud and misrepresentation. According to the learned State counsel, in fact the plaintiff-respondent was required to prove the fraud and misrepresentation to get the judgment set aside in that civil suit and there is no evidence to support the said contention as raised and thus, the findings on this issue are liable to be reversed in favour of the appellants. Counsel for the appellants has further argued that there is no legal evidence on record to prove the factum of purchase of the suit property in favour of the plaintiff respondent.

8. I have heard learned counsel for the parties and perused the impugned judgments and decrees of the Courts below and the record of the case.

9. Admittedly, plaintiff-respondent has relied upon a sale certificate dated 4.3.1964 placed on record as Ex. P1 to support his case. However, a perusal of the aforesaid document would show that the plaintiff-respondent has exhibited the photocopy of the alleged sale certificate dated 4.3.1964 issued in his favour. The said document has not been proved on record in accordance with law.

10. It is well settled that mere exhibition of the said document will not dispense with mode of its proof. Thus, the said document cannot be taken into consideration for holding that the plaintiff-respondent has purchased the suit property vide aforesaid sale certificate. There is nothing on record to prove that the appellant ever deposited sale consolidation as alleged by him. It may further be noticed that though it has been alleged by the plaintiff-respondent that the suit property has been purchased from the Central Govt. yet the Central Govt. has not been arrayed as defendant in the suit.

11. Further, from the record, it is found that certified copies of the judgments dated 02.05.1987 and 20.11.1987 are on record of this case. A perusal of the same would show that earlier suit filed by the plaintiff-respondent on the same subject matter was dismissed. Even this fact has been admitted by the plaintiff-respondent in his replication.

12. Further, it may be noticed from the pleadings that the plaintiff-respondent himself had filed suit and appeal earlier whereas a stand has been taken on his behalf before the Courts below that the said judgments and decrees were obtained by the defendant-appellants by way of fraud and misrepresentation. The aforesaid stand taken on behalf of the respondent-plaintiff is belied from the pleading of the parties itself. Though plaintiff-respondent has not pleaded the factum of earlier suit filed by him, however, in the replication filed by him, he has

admitted the said fact of filing the civil suit as well as appeal. Thus, the plaintiff-respondent has further tried to conceal the material facts from the knowledge of the Court by not pleading the aforesaid facts in the civil suit. Counsel for the plaintiff-respondent has not disputed the fact that the earlier suit filed by him was on the same subject matter and the findings of the earlier judgments and decrees dated 2.5.1987 and 20.11.1987 will operate as res judicata in the instant suit.

13. In this view of the matter, the questions of law, as raised on behalf of the State of Haryana in this appeal, are answered in its favour. Resultantly, this appeal is accepted with costs and the judgments and decrees of the Courts below are set aside resulting into dismissal of civil suit filed by the plaintiff-respondent.