

SUPREME COURT OF INDIA

Jaswant Singh

Vs.

Jaspal Singh

C.A.No.5962 of 2010

(N.V.Ramana and Mohan M.Shantanagoudar,JJ.,)

07.05.2019

JUDGMENT

Mohan M.Shantanagoudar,J.,

1. The judgment dated 27.10.2009 passed by the High Court of Punjab and Haryana at Chandigarh in RSA No. 3609 of 1998 (O&M) is called into question in this appeal by the unsuccessful defendants. Plaintiff No.1 in the present suit, i.e. O.S. No. 388 of 1986The brief facts leading to this appeal are that Jaspal Singh, (Respondent No.1 herein), had been residing in West Germany (as it then was) and had authorised Kidar Singh son of Hem Raj to do all acts and to file or defend any suit regarding the suit property vide special power of attorney. The present suit was filed by Kidar Singh on behalf of Plaintiff No. 1 for declaration that the decree dated 29.07.1983 in Civil Suit No. 18 of 1983 titled as Harbhajan Singh & Ors. v. Jaspal Singh, decided by the Sub-Judge, IInd Class, Panipat, holding Defendant Nos. 1 to 3 in the present suit (the appellants herein) to be the owners in possession of the suit land, was illegal, null and void, and not binding on Plaintiff No. 1, and that the registered sale deed dated 05.06.1984 in respect of the suit land executed by Plaintiff No. 1 in favour of Defendant Nos. 4 to 10 in the present suit is legal and binding on all persons including Defendant Nos. 1 to 3. The consequential relief of injunction was also sought for. Though Plaintiff No. 1 at some point got the present suit dismissed as withdrawn, Defendant Nos. 4 to 10 were later transposed as plaintiffs, and Plaintiff No. 9 impleaded, and proceedings in the suit continued. The Trial Court decreed the suit. The decree of the Trial Court was confirmed by the First Appellate Court as well as by the Second Appellate Court. This appeal is presented before us as against the concurrent findings of three courts.

3. All the Courts have concurrently concluded that the judgment and decree dated 29.07.1983 passed in Civil Suit No.18 of 1983 by the Sub-Judge, IInd Class, Panipat is illegal and does not bind the plaintiffs (the respondents herein). The Courts have held that the same is a collusive decree between the plaintiffs and the defendants in the said suit.

4. Mr. Vinay Navare, learned senior counsel for the appellants, and Mr. Brijender Chahar, learned senior counsel appearing for the respondents, have taken us through the entire

material on record and argued in support of their respective cases.

5. All the three Courts, on facts, have rightly concluded that the judgment and decree passed in Civil Suit No. 18 of 1983 was illegal, and hence not binding on the plaintiffs. A collusive decree was obtained by the plaintiffs in Civil Suit No. 18 of 1983 (Defendant Nos. 1 to 3 in the present suit) by agreeing to deposit part of the pre-emption money in certain pre-emption suits filed by Jaspal Singh (Plaintiff No. 1 in the present suit), in lieu of acquiring rights in the suit property. Thus, the decree created new rights in the suit property in favour of Defendant Nos. 1 to 3, virtually amounting to a sale deed, and seems to have been used as a mode to transfer property without a valid sale deed. It is also found that Plaintiff No. 1 Jaspal Singh had appeared in the said suit voluntarily, without the issuance of summons to him, and on the date of appearance, hurriedly admitted the entire case of the plaintiffs therein, consequent to which the suit was decreed. Despite such collusive decree, the suit property continued to be in the name of the original owner, Plaintiff No. 1 Jaspal Singh, who also continued to be in possession thereof. Plaintiff Nos. 2 to 9 in the present suit, who had purchased the suit property from Plaintiff No. 1 vide sale deed dated 05.06.1984, were held to be bona fide purchasers for valuable consideration. This was also in light of the circumstance that the mutation pursuant to the judgment and decree dated 29.7.1983 was sanctioned after the execution of the sale deed by Plaintiff No. 1 in favour of Plaintiff Nos. 2 to 9. Possession of the suit property had also been handed over to Plaintiff Nos. 2 to 9, but it seems that during the pendency of the matter they were dispossessed of the same by virtue of an order passed by the Executive Magistrate. We do not find any valid reason to disagree with the reasons and conclusions arrived at by the Courts below.

6. Be that as it may, since we find that all the three Courts have concurrently and rightly concluded in favour of the plaintiffs and consequently decreed O.S. No. 388 of 1986, no interference is called for Accordingly, the appeal stands dismissed.