

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1835 of 2008 (O&M)

Date of Decision: 03.08.2015

Hans Raj and others

... Appellants

Versus

Ram Piari

.... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Kanwaljit Singh, Sr. Advocate,
with Mr. B.B.S. Randhawa, Advocate,
for the appellants.

Mr. Virender Kumar, Advocate,
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The Additional Civil Judge (Senior Division), Sirsa dismissed the suit with costs vide judgment and decree dated October 05, 2005. In the first instance, the trial Judge held that the plaintiff was not owner in possession over the suit property. The judgment and decree suffered by the parties on April 06, 1990 was held valid and not based on fraud practiced by defendant # 1. The plaintiff had contended that summons in the previous suit were not served on her. She was the only surviving member of the family and heir apparent, so the question of suffering the decree excluding her from inheritance did not arise and the decree was liable to be set aside. But, the trial court did not rule in favour of the plaintiff Ram Piari. Therefore, defendant # 1 became owner in possession of the suit land by way of a

family settlement and this position was confirmed by the decree of the civil court dated April 06, 1990. The trial Judge held that the suit was barred by limitation in challenge to the earlier decree in Civil Suit # 433 of 1990 titled *Kanhaiya Ram vs. Ram Piari*. The statement of Ram Piari in the previous suit admitting the claim of the plaintiff, who is the present contesting defendant, was a result of fraud because she had not engaged Sh. B.K. Diwakar, Advocate, Sirsa to be her appointed counsel. He had thus no business to enter the statement in court and bind her to the decree. Nevertheless, the challenge to the decree based on fraud failed in the trial court. In the lawsuit Ram Piari had claimed $\frac{1}{2}$ share i.e. 52 K 18 M in total land which claim was not accepted. The family settlement-cum-partition which took place between defendants # 1 to 3, ten years prior to the filing of the present suit was affirmed by the civil court decree dated April 25, 1998. Defendants # 2 and 3 were recorded as owners of the property in dispute in the revenue record including in the Jamabandi for the year 1998-99. The present suit was filed on February 05, 1998 and was dismissed on October 05, 2005.

2. Having lost the suit, Ram Piari carried a first appeal to the court of the learned Additional District Judge, Sirsa which reversed the decree of the trial Judge and set aside the judgment. The court of first appeal undid the decree dated April 06, 1990 after re-appreciating the evidence on record. The learned Judge found that Ram Piari had never engaged any counsel in the previous suit and this fact is fortified by the power of attorney placed on file which confirmed that she had not. The earlier suit was filed by late Kanhaiya Ram through his counsel Sh. R.P. Jindal, Advocate. Sh. B.K.

Diwakar, Advocate was the ostensible counsel for defendant Ram Piari, the present respondent, but the power of attorney (vakalatnama) placed on the file bears the signatures of Sh. R.P. Jindal, Advocate alone. Sh. R.P. Jindal, Advocate appeared in the witness box as DW-2. He admitted that he had filed the power of attorney which bears the thumb impression of Ram Piari as petitioner on it. But he admitted that there is no power of attorney executed by him to appear for Kanhaiya Ram. Neither was summons issued by court process nor process fee etc. was affixed on the relevant paper of the original judicial file. Thus, summons were not issued to defendant Ram Piari in the previous suit for her to come forward willingly to suffer a statement against herself depriving her of her inheritance from her father the late Maiya Ram. The court found that Ram Piari and Kanhaiya Ram are very closely related to each other being uncle and niece. The plaintiff was the only child and daughter of Maiya Ram who died prior to the filing of the suit dated March 23, 1990. She is the sole surviving heir and legal representative of late Maiya Ram and in the due course would inherit his property by succession. Therefore, the court of first appeal held that it is proved on file that Ram Piari never engaged any counsel agreeing to transfer her land in favour of Kanhaiya Ram. There is absolutely no evidence on the file as to what was the occasion for Ram Piari to suffer such a decree in favour of her uncle. The court of first appeal held that the very basis of the family settlement is not proved on the file. Maiya Ram and Kanhaiya Ram were brothers and owners in half share of the total land holding. Ram Piari was the grand-daughter of Chandi Ram. Maiya Ram and Kanhaiya Ram were sons of Chandi Ram. The present appellants are sons of

Kanhaiya Ram. It was also the position available on the revenue record that mutation of inheritance of the estate left behind by Maiya Ram was sanctioned only in favour of his daughter Ram Piari. After the death of her father, Ram Piari was in cultivating possession of the suit land. Insofar as the presence of the thumb impressions of Ram Piari on her power of attorney are concerned, the court of first appeal took the view that this fact is not sufficient to prove the intention of the parties to execute the disputed document. She had explained in her testimony that her signatures were obtained by playing fraud upon her and if such a thing happened it is not improbable that the parties to the suit who are closely related to each other and were in a relationship of trust could have suffered breach of faith. In short, the court of first appeal held that the decree obtained by Kanhaiya Ram was at the back of Ram Piari and was not binding on her.

3. On the question of limitation, the court of first appeal rightly reversed the findings of the trial court holding that when the decree was obtained without notice to Ram Piari and was a fraud practiced on her rights then the question of limitation would not arise as fraud vitiates everything and there is no limitation against fraud.

4. The trial court had fallen in grave error in misreading the evidence on record and the error has been corrected in first appeal. There is sufficient weight of precedent in case law to support the legal proposition that a judgment and decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a decree can be challenged in any court even in collateral proceedings. In order to substantiate this legal view point, the learned counsel for the respondent Mr. Virender Kumar cites the

decision of the Supreme Court in **Smt. Badami (Deceased) By her L.R. vs. Bhali**, 2013(1) RCR (Civil) 821 (SC) where the court has held unequivocally that a decree obtained by fraud is a nullity ab initio. The courts of law are meant for imparting justice between the parties and the one who comes to court must come with clean hands. To this, I would only add that the defence must also be above board. The defence must also be transparent with clean heart, clean mind, clean motive, clean objective and clean hands. I would add and say that fraud is cobra poison and an anathema to the pure waters flowing from the eternal springs of justice. A person holding undisputed title to land cannot be waylaid by the rigours of limitation in bringing suit to undo a wrong committed behind his unwary back. In an earlier decision on the point of fraud the Supreme Court in **S.P. Changalvaraya Naidu (dead) by L.Rs vs. Jagannath (dead) by L.Rs.**, (1994) 1 SCC 1 speaking through Hon'ble Kuldip Singh, J. prefaced the judgment by quoting from Chief Justice Edward Coke of England by firing the opening salvo recorded three centuries ago that "Fraud avoids all judicial acts, ecclesiastical or temporal." It is the settled proposition of law that a judgment and decree obtained by playing fraud is of no moment. It is culpable homicide and the arms of the law are long enough not to be trammled by mere passage of time. A guilty person can be booked anytime. Such a judgment and decree – be it by the first court or by the highest court, proclaimed the Supreme Court in *S.P. Changalvaraya* case – "has to be treated as a nullity by every court, whether superior or inferior." It can be challenged in any court even in collateral proceedings.

5. Before winding up his arguments, Mr. Kanwaljit Singh, learned

Senior counsel faced with the stark and dreary facts is at pains to read the cross-examination of Ram Piari recorded on September 03, 2003 in the present suit from where he contends that there is an admission by Ram Piari that she knew of the existence of the decree dated April 06, 1990 but which she challenged in the suit belatedly after expiry of about 8 years. He then refers to another alleged admission of Ram Piari towards the end of the cross-examination where she deposed that "*Intkal ka mujhe paanch sal pehle pata laga*". This admission is linked to the date of the suit and even prior thereto which date Mr. Kanwaljit Singh attributes to the year 2003 and, therefore, the question of limitation arises. I am unable to persuade myself to the view point.

6. As I read the cross-examination, I would not make a mountain on it since the five years spoken of would most certainly refer in point of time as prior to the date of the deposition in court i.e. September 03, 2003 which would take us back to the date and year of filing of the suit in 1998. I would thus reject the argument of the learned senior counsel on this aspect. The suit was eminently within limitation and the trial court erred in *inter alia* dismissing the suit on the point of maintainability and on limitation.

7. I have no reason to differ with the judgment of the court of first appeal reversing the decree of the trial court for proper reasons recorded after re-appreciating the evidence and arriving at a different conclusion which is more probable and plausible on the preponderance of evidence adduced by the parties on record which lean heavily in favour of Ram Piari.

8. For the foregoing reasons and by affirming the findings of the court of first appeal, this appeal is dismissed as no question of law much

less a substantial one arises for consideration in the second appeal side of this court. As the main appeal has been dismissed, the pending applications, if any, shall also stand disposed of as no orders are required to be passed therein.

(RAJIV NARAIN RAINA)
JUDGE

03.08.2015
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