

IN THE COURT OF PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

ESA No.6 of 2014

Date of Decision: 26.02.2015

Amarjeet Singh and another

...Appellants

Vs.

Smt.Harbhajan Kaur and others

..Respondents.

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. Yogesh Chaudhary, Advocate for the appellants.

Mr. Hitesh Kaplish, Advocate for respondent No.7.

RAKESH KUMAR JAIN, J. (ORAL)

In order to appreciate the controversy between the parties, it would be relevant to refer to the pedigree table as the parties to the lis are closely related. The pedigree table reads as under :

Tehal Singh s/o Sh.Santa Singh

<u>(son)</u>	<u>(son)</u>	<u>(daughter)</u>	<u>(widow)</u>
--------------	--------------	-------------------	----------------

Dr.Kirpal Singh	Gurdial Singh	Gurdeep Kaur	Laj Kaur
-----------------	---------------	--------------	----------

(predecessor of respondents No.1 to 6)	(respondent No.7)	(mother of appellants)	(died) in the year 1997
--	-------------------	---------------------------	----------------------------

In brief, the common ancestor Tehal Singh was stated to have

died intestate. After his death, he was succeeded by his two sons, daughter and a widow to the extent of 1/4th share each. Harpinder Singh filed a civil suit No.479/1991 against Kirpal Singh, Gurdayal Singh and Laj Kaur, all the other three heirs of Tehal Singh, in which his wife Gurdip Kaur appeared on behalf of Harpinder Singh and Laj Kaur on the basis of a power of attorney but was not having any power of attorney of Dr.Kirpal Singh. She suffered a statement in favour of her husband and as a result thereof, suit filed by him was decreed on 20.7.1991. The said decree was challenged by Kirpal Singh and Gurdial Singh in a separate suit on the ground of fraud and impersonation. Suit was decreed on 31.10.2006. The said judgment and decree has attained finality as the second appeal bearing RSA No.3463 of 2010 filed by the defendants therein was dismissed by this Court. The plaintiff in the decree dated 31.10.2006, filed the execution in order to recover possession as present appellants who are the son and daughter of Harpinder Singh filed the Objections on the ground that the decree holders have not become the owners of the entire property left behind by Tehal Singh as the decree dated 20.7.1991 was set aside by decree dated 31.10.2006 and the share of their mother Gurdip Kaur reverted back to her and after her death, succeeded by them. The Objections filed by the appellants were dismissed by the Executing Court and the appeal filed by them also met with the same fate. Hence, the present second appeal.

Counsel for the appellants has reiterated the stand taken by him before the Courts below about the share of their mother in the property in dispute on the ground that after the decree dated 20.7.1991 was set aside in toto, the rights of their mother would revive and status quo ante has to be

presumed and on that count, they would be entitled to their 1/4th share. Counsel for the appellants, however, has submitted that the present appellants have also filed separate suit bearing No.393/2012 seeking declaration with consequential relief of joint possession and permanent injunction on the same premise that after the decree dated 20.7.1991 was set aside by the decree dated 31.10.2006, right in the property to the extent of 1/4th share in favour of the mother has revived and the said suit has also been dismissed by the trial Court on 16.12.2014 and the following observations have been made therein.

“The sequence of events further reveal that earlier decree dated 20.7.1991 was passed by the court of Shri Sant Parkash the then Id.SJIC, Karnal in civil suit no.479/1991 titled as Harpinder Singh vs. Kirpal Singh etc. which was a consent decree and validity of this consent decree was challenged by Kirpal Singh and Gurdayal Singh in suit filed by them on 21.4.1999 which was decided by the court of Shri Narender Pal on 31.10.2006. Decree dated 20.7.1991 was challenged on the ground of fraud and impersonation. Infact Tehal Singh, maternal grand father of the plaintiffs and defendant No.8 and father of defendants No.1 and 7 was owner of the suit property vide sale deed dated 10.5.1962 and consent decree dated 20.7.1991 was passed in favour of Harpinder Singh on the basis of oral family settlement arrived in the year 1982 i.e. during the life time of Tehal Singh as Tehal Singh died in the year 1982. The said decree dated 20.7.1991 which was a consent decree on the basis of oral family settlement was set aside by the court of Shri Narender Pal, the then Id.CJJD, Karnal vide judgment and decree dated 31.10.2006. Perusal of judgment and decree dated 31.10.2006, copy of which is Ex.D8, reveals that vide this judgment, the judgment and decree dated 20.7.1991 passed by

Shri Sant Parkash, the then Id. SJIC, Karnal in case titled as Harpinder Singh Vs. Kirpal Singh was declared null and void and was set aside and decree of possession of the house was passed in favour of plaintiffs of that suit i.e. in favour of Kirpal Singh and Gurdayal Singh (defendants No.1 and 7 in the present suit). In para nos.32 and 33 of the judgment dated 31.10.2006, it was stated that Gurdip Kaur and Laj Kaur have relinquished their share in favour of Gurdayal Singh and Kirpal Singh and even in the assessment register of the year 1997/98 names of the plaintiffs i.e. Gurdayal Singh and Kirpal Singh appeared in column of ownership of the impugned house and hence, Gurdayal Singh and Kirpal Singh were owners as per assessment register for the purpose of levy of tax. Hence, it was held that plaintiff in that suit namely Kirpal Singh and Gurdayal Singh were owners of the suit property at the time when decree dated 20.7.1991 was suffered by Gurdip Kaur in favour of her husband Harpinder Singh and it was held that no family arrangement or settlement was arrived in the year 1991. Hence, para no.33 clearly reveals that on the basis of affidavits, copy of which were Ex.P9 and Ex.P10 in that suit, and vide judgment dated 31.10.2006 Gurdayal Singh and Kirpal Singh were declared as owners of the suit property. The said finding of the Id. Court of Shri Narender Pal, the then Id. CJJD Karnal has not been disturbed or set aside by the First Appellate Court of Shri NP Dewett, the then Id.ADJ, Karnal nor by the Hon'ble High Court. It means that said finding was upheld upto the Hon'ble High Court. Moreover, nowhere it has been prescribed that after decree dated 20.7.1991 of the court of Sat Parkash, the then Id.CJJD, Karnal was set aside by the court of Shri Narender Pal, the then Id.CJJD Karnal on 31.10.2006, then natural succession reopened. If it would have been the case that after setting aside decree dated 20.7.1991 natural succession would have been reopened then plaintiffs or their father

Harpinder Singh would have pleaded so in the earlier suit. But once there is clear cut finding of the court of Shri Narender Pal, the then Id.CJJD, Karnal vide judgment dated 31.10.2006 that Kirpal Singh and Gurdyal Singh were owners of the suit property, then it is evident that natural succession of Tehal Singh had not reopened after death of Tehal Singh. Further even in the execution petition also, plea of the natural succession was not taken by the present plaintiffs and 3rd party objections were filed by the present plaintiffs which were also dismissed. Hence, plea of the plaintiffs that natural succession reopened once decree dated 20.7.1991 was set aside, is not sustainable and is not proved.”

After hearing the learned counsel for the parties and considering the facts and circumstances, I am of the view that there is no merit in the present appeal because finding has been recorded in the civil suit No.393/2012 that the other two heirs of Tehal Singh, namely, Gurdip Kaur and her mother Laj Kaur have relinquished their share in favour of Harpinder Singh by way of affidavits Ex.P9 and Ex.P10 on the basis of which a finding has been recorded in the judgment and decree dated 31.10.2006 that they have become owners of the share of their sister and mother besides their own share. To come out of his finding, the appellant has already filed an appeal which is pending adjudication .

In view of the above discussion, there is no reason for this Court to interfere in the impugned judgment especially when the appellants are already out of possession. The question as to whether the decree dated 31.10.2006 has effected the rights of the present appellants in the litigation initiated by them in civil suit No.393/2012 would be decided in the pending

appeal before the first Appellate Court.

In view of the aforesaid discussion, I find no merit in the present appeal and the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

26.2.2015
Meenu