

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

RSA No.1853 of 2010(O&M)  
Date of decision: 19.01.2015

|                    |        |                |
|--------------------|--------|----------------|
| Krishan Chand Jain | Versus | ...Appellant   |
| Ravinder Jain      |        | ... Respondent |

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr. Rajinder Goyal, Advocate for the appellant.  
Mr. Sanjay Verma, Advocate for the respondent.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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**ARUN PALLI J.** (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 11.03.2008. Appeal preferred against the said decree failed and was dismissed on 11.11.2009. This is how, plaintiff is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiff, he prayed for a declaration that he and other heirs of late Charanji Lal son of Matu Ram were joint owners of the suit property and decree dated 12.12.1992, rendered in civil suit No.739 of 1992, suffered by Charanji Lal, in favour of the defendant Ravinder Jain, was a result of fraud and was a void ab initio. It was averred that the suit property, measuring 75 sq. yards, shown in the red colour in the site plan to begin with, was a double

storeyed shop having three compartments, but as the building had collapsed, it was reduced to a vacant site. And was an ancestral property in the hands of Charanji Lal son of Matu Ram. It was averred that during the lifetime of late Chiranji Lal, there was a partition of all the Joint Hindu Family properties including the suit land vide a duly executed partition deed dated 06.08.1982. And the suit property had fallen to the share of deceased Charanji Lal i.e. father of the plaintiff. It was maintained that the defendant had procured a judgment and decree dated 12.12.1992, rendered in civil suit No.739 of 1992, and the same was a result of fraud and thus, liable to be set aside. Further, as the said decree involved an immovable property, valuing more than ₹ 100/-, it required compulsory registration. Since defendant refused to acknowledge the claim of the plaintiff and to get the decree dated 12.12.1992, set aside, thus, the suit.

In defence, it was pleaded, inter alia, that the defendant was in actual physical possession of the suit property and thus, the declaration prayed for by the plaintiff, in the absence of any prayer for possession, could not be granted. Further, suit property was in possession of Siri Ram in the capacity of tenant, who was inducted by Charanji Lal, the grandfather of the defendant. As the suit property had become unsafe and unfit, steps for ejectment were taken by the defendant against Siri Ram and eventually, the order of

eviction was passed against the tenant and possession of the demised premises was delivered to the defendant. It was maintained that pursuant to a partition that was effected by Charanji Lal of his property amongst his sons, the suit property had fallen to his exclusive share. Accordingly, it was averred that even if it was assumed that the suit property was ancestral, the same having fallen to the share of Charanji Lal, pursuant to a family partition, attained the character of a self acquired property. Therefore, the decree dated 12.12.1992, was stated to be legal and valid. And also that it did not require registration. The decree dated 12.12.1992, was suffered by Charanji Lal in favour of the defendant with his free consent. Post passing of the decree dated 12.12.1992, suit property was mutated in the Municipal record and House Tax register in the name of the defendant. In fact, defendant was recorded to be the owner of the suit property during the lifetime of Charanji Lal. Accordingly, defendant prayed for dismissal of the suit.

Trial court, on a consideration of the matter in issue and the evidence on record, found that the plaintiff failed to prove that decree dated 12.12.1992, was actually a result of fraud played by the defendant upon Charanji Lal. It was observed that on the one hand, plaintiff (PW1) deposed in his cross-examination, that the decree dated 12.12.1992, was procured secretly on the admission of Charanji Lal without

any notice to the other family members, and on the other, the same was purported to be a result of fraud. Nothing was brought on record by the plaintiff to prove that the judgment and decree dated 12.12.1992, was a result of fraud. Still further, Charanji Lal, after passing of the decree, remained alive for a period of ten years, but he never questioned the said decree during his lifetime. It was observed that the record showed that pursuant to a decree dated 12.12.1992, the suit property was mutated in the Municipal records in the name of the defendant and thereafter, he was being shown to be the owner thereof, yet neither plaintiff nor other heirs of Charanji Lal ever questioned the said position. In so far as, whether the decree dated 12.12.1992, was required to be registered, it was observed that the said decree was passed on the basis of an oral family settlement that had taken place between Charanji Lal and Ravinder Jain, therefore, the decree did not confer any title upon the defendant, but merely acknowledged the family settlement, pursuant where to the suit property had fallen to the share of the defendant. Therefore, the decree in question did not require registration. Further, plaintiff was never in possession of the suit property even as a co-owner, in the absence of a consequential relief qua possession being prayed for, a mere suit for declaration, was not maintainable in the wake of the provisions of Section 34 of the Specific Relief Act. Resultantly, the suit was dismissed.

Being aggrieved against the said decree, plaintiff preferred an appeal. First appellate court reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial court and the findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard learned counsel for the parties at length and perused the records.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Concededly, the suit property was owned by Charanji Lal i.e. father of the plaintiff and grandfather of the defendant. Charanji Lal suffered a decree dated 12.12.1992, in civil suit No.739 of 1992, in favour of the defendant qua the suit property. Charanji Lal remained alive for a period of 10 years after passing of the said decree dated 12.12.1992, as he died on 13.12.2002. Concededly, Charanji Lal never assailed and questioned the said decree during his lifetime. Post passing of the decree dated 12.12.1992, the suit property was mutated in

the name of the defendant and he was shown to be the owner thereof. And even the said position was never questioned by heirs of Charanji Lal after his death. Plaintiff filed the present suit after almost 12 years of passing of the decree on 20.11.2004, alleging that the decree dated 12.12.1992, was obtained by the defendant by fraud. Nothing was brought on record by the plaintiff to show that the decree dated 12.12.1992, was indeed a result of fraud. Decree in question did not confer any title upon the defendant, but merely acknowledged a family settlement pursuant to which the same had fallen to his share. Thus, the said decree was only a declaration of pre-existing rights. And, therefore, did not require registration. Learned counsel for the appellant could not point out as to how the conclusions that have concurrently been recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

January 19, 2015  
Rajan

**( Arun Palli )**  
**Judge**

