

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

RSA No.3211 of 2010(O&M)
Date of decision: 14.01.2015

Tarsem Singh and others

...Appellants

Versus

Gurdeep Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Vibha Tewari, Advocate for the appellants.

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

ARUN PALLI J. (Oral)

Suit filed by the plaintiffs was dismissed by the trial court vide judgment and decree dated 13.12.2007. Appeal preferred against the said decree failed and was dismissed on 26.02.2010. This is how, plaintiffs are 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 short, in a suit filed by the plaintiffs, they prayed for a declaration that plaintiffs had become owners of the land measuring 5 kanals 0 marla, out of the land 8 kanals 0 marla, bearing khasra No.1//24 Min (5-0), 1//24 Min (3-0), situated in village Hansron, Tehsil and District Nawanshahr, as property in question stands redeemed pursuant to the order

rendered by SDM-cum-Collector, Nawanshahr, dated 17.07.1997. Entries in the jamabandi, showing suit property to be still mortgaged in favour of the defendants, were thus liable to be corrected in the name of the plaintiffs. A decree for injunction was also claimed, restraining the defendants from alienating the suit land in any manner. Possession of a land measuring 3 kanals 15 marlas out of the land 5 kanals was also claimed, as possession of the rest 1 kanal 5 marlas was already obtained by the plaintiffs. It was averred that the suit property was owned by Gurbachan Singh son of Dhian Singh, who mortgaged the same in favour of Charan Kaur. And Charan Kaur sold mortgagee rights in favour of Niranjana Singh son of Dhian Singh. Since Niranjana Singh had died, defendants being his heirs, succeeded to his estate. Further, Gurbachan Singh had transferred his entire property during his lifetime in favour of Charan Singh son of Mit Singh, pursuant to a decree dated 19.11.1990. Accordingly, mutation was sanctioned in his favour. Since Charan Singh had also died, plaintiffs being his heirs had succeeded to his estate. It was maintained that Charan Singh during his lifetime applied for redemption of mortgaged property and deposited a mortgage amount of ₹ 3,000/- in the treasury on 31.10.1976. However, the entry in the register maintained by the office of SDM-cum-Collector, Nawanshahr reflected that mortgaged property was redeemed on 06.11.1990, by order of the then

Collector, Nawanshahr. Charan Singh applied for warrant of possession, but the same could not be implemented. Plaintiffs again applied for warrant of possession for the land measuring 5 kanals 0 marla, and the same were issued by the then Tehsildar, Nawanshahr and possession of 1 kanal 5 marlas was handed over to the plaintiffs by Patwari and Girdawar at the spot. Possession as regards the rest of the land measuring 3 kanals 15 marlas, could not be delivered on account of standing crops. Thus, the suit.

In defence, it was pleaded, inter alia, that as Gurbachan Singh son of Dhian Singh had only inherited a life interest in the estate of his father, vide a will dated 09.06.1973, he had no right to alienate/transfer the suit property. Further, a civil suit No.280 of 1990, titled Niranjana Singh v. Gurbachan Singh, was instituted. During the pendency of the said suit, a compromise was effected between the parties and on the basis thereof, a decree dated 09.11.1990, was passed. Gurbachan Singh himself, during his lifetime, got the suit property redeemed, pursuant to an order dated 06.11.1990, passed by Assistant Collector Ist Grade, Nawanshahr. Therefore, on his death, his estate was not mortgaged with anybody. As regards decree dated 19.11.1990, the same was alleged to be result of fraud since Gurbachan Singh neither suffered any such decree nor he had any right to suffer the same.

Trial court, on a consideration of the matter in issue and evidence on record, found that judgment and decree dated 30.05.1985, rendered in civil suit No.224 of 1983, titled as Gurbachan Singh v. Mehar Singh and others, revealed that plaintiff claimed to have inherited the suit land from his father Dhian Singh, on the basis of a will dated 09.06.1973, and he had only inherited a life interest therein. And thus, plaintiff had no power to alienate or transfer the said land. In reference to the certified copy of the will dated 09.06.1973 (Ex.D2), it was observed that although the same was not proved, as required in law, but the contents thereof could always be taken into consideration for collateral purposes particularly in the wake of the plea of Gurbachan Singh in civil suit No.224 of 1983. Accordingly, it was observed that even if Gurbachan Singh had mortgaged the suit property, but the same had no effect on the right of the actual owner since he only had a life interest therein. In reference to the judgment and decree dated 19.11.1990 (Ex.P10), rendered in civil suit No.3 of 1990, titled as Charan Singh v. Gurbachan Singh, on the basis whereof plaintiff purported to have acquired title qua the suit property, it was observed that even the defendants had placed on record a copy of the judgment and decree dated 09.11.1990 (Ex.D3), rendered in civil suit No.280 of 1990, filed by Niranjana Singh, Mehar Singh, Sarwan Singh and Randhir Singh against Gurbachan Singh, and the same was decreed on

the basis of a compromise (Ex.D5), that was arrived at between the parties. Resultantly, vide decree dated 09.11.1990, Niranjn Singh had become owner of ½ share and rest of the plaintiffs in the said suit became owners of the remaining ½ share, in the property that was a subject matter of the said suit including the land in question in the present suit. Accordingly, it was observed that although judgment and decree dated 09.11.1990, was passed prior in point of time, yet this fact was never disclosed by Gurbachan Singh before the court that rendered the decree dated 19.11.1990 (Ex.P10), in favour of Charan Singh. Accordingly, it was concluded that the judgment and decree dated 09.11.1990 had become final and binding on Gurbachan Singh. And in so far as the decree dated 19.11.1990, since Niranjn Singh and others were not parties to the said suit, thus, the same was not binding on them. As regards, judgment and decree dated 24.12.1992 (Ex.P7) [rendered in civil suit No.188 of 1991, titled as Niranjn Singh and others v. Charan Singh and others], relied upon by the plaintiffs, vide which the suit filed by Niranjn Singh and others was dismissed, it was observed that the said decree (Ex.P7 & Ex.P8), an appeal was preferred. And the first appellate court set aside the said decree and remitted the matter to the trial court. However, post remand, Niranjn Singh and others did not lead any evidence and eventually, the suit was dismissed as withdrawn. Accordingly, it was

observed that the dismissal of the said suit would not affect the judgment and decree dated 09.11.1990. Further, Dhian Singh was the owner of the entire property including the suit land and he had three sons, namely, Niranjana Singh, Bachitter Singh and Gurbachan Singh. And since only a life interest in the suit property was bequeathed in favour of Gurbachan Singh, post his death, entire estate of Dhian Singh devolved upon his two brothers, namely, Niranjana Singh and Bachitter Singh. Likewise, on death of Niranjana Singh, his share was inherited by his Class I heirs i.e. defendants and share of Bachitter Singh was inherited by his Class I heirs. Accordingly, Charan Singh, who happened to be the son-in-law of maternal uncle of Gurbachan Singh, had no right, title or interest in the suit property. That being so, plaintiffs were not held entitled even to the injunction prayed for, and also for possession of a land measuring 3 kanals 15 marlas. The suit was accordingly, dismissed.

Being aggrieved against the said decree, plaintiffs 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. Resultantly, the appeal was dismissed.

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

Learned senior counsel for the appellants simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. All what he has urged is that pursuant to a decree dated 19.11.1990, suffered by Gurbachan Singh in his favour, he acquired title to the suit property and as the said decree was never set aside in any proceedings, the same has attained finality. Further, vide judgment and decree dated 24.12.1992 (Ex.P7 & Ex.P8) [rendered in civil suit No.188 of 1991], suit filed by Niranjn Singh and others against predecessor-in-interest of the plaintiffs, namely, Charan Singh, was dismissed with costs. He contends that in the said suit Gurbachan Singh himself was plaintiff No.5 and a decree dated 19.11.1990, suffered by Gurbachan Singh in favour of Charan Singh was also assailed in the said proceedings. Thus, he submits that findings recorded in the suit would operate as res judicata. Lastly, he contends that defendants could not claim title pursuant to decree dated 09.11.1990, as the same required registration.

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 Dhian Singh, father of Gurbachan Singh. In a suit filed by Gurbachan Singh himself

i.e. civil suit No.224 of 1983, he acknowledged that pursuant to a will executed by his father Dhian Singh, dated 09.06.1973, only a life interest was bequeathed in his favour. And thus, he lacked power to alienate or transfer the said land. As is discernible from the records, original registered will dated 09.06.1973, was a part of the record of civil suit No.280 of 1990, titled as Niranjana Singh and others v. Gurbachan Singh and others. And certified copy thereof was proved on record as Ex.D2. Recitals of the will dated 09.06.1973, showed that Dhian Singh had only bequeathed a life interest in favour of his son Gurbachan Singh. Nothing was brought on record to show that Gurbachan Singh was the absolute owner of the suit property. That being so, he completely lacked capacity to alienate or transfer the suit land, in any manner. Once that is so, judgment and decree dated 19.11.1990, on the basis whereof Charan Singh purported to have acquired title qua the suit property in a decree suffered by Gurbachan Singh, was of no consequence. Be that as it may, even if, it is assumed for a moment that Gurbachan Singh was the owner of the suit land and was thus, entitled to transfer the same, the question that assumes significance at this juncture, is whether in the wake of the decree dated 09.11.1990, what right, title or interest, he was left with so as to suffer a decree dated 19.11.1990. Concededly, during the pendency of civil suit No.280 of 1990, filed by Niranjana Singh

and others against Gurbachan Singh son of Dhian Singh, a compromised (Ex.D5) was effected between the parties, which was made a part of the decree dated 09.11.1990 (Ex.D4). Pursuant to the said decree, Niranjn Singh (predecessor-in-interest of the defendants) became owner of $\frac{1}{2}$ share of the suit property including the land involved in the present lis. And the remaining $\frac{1}{2}$ share was owned by Mehar Singh, Sarwan Singh and Randhir Singh jointly. Meaning thereby, Gurbachan Singh, admitted the plaintiffs in the said suit to be the owner as indicated above and even bequeathed his limited/life interest in their favour. Indisputably, decree dated 09.11.1990, was never questioned or assailed by Gurbachan Singh during his lifetime, though he even otherwise had a life interest. Once Gurbachan Singh was left with no right, title or interest in the suit land, decree suffered by him in favour of predecessor-in-interest of the defendants on 19.11.1990, was of no consequence in law. Ex facie, factum of the decree passed in favour of Niranjn Singh and others against Gurbachan Singh on 09.11.1990, was never brought to the notice of the court that rendered a decree dated 19.11.1990. As regards the dismissal of the suit filed by Niranjn Singh and other i.e. civil suit No.188 of 1991, of course the said suit was dismissed vide judgment and decree dated 24.12.1992 (Ex.P7 & Ex.P8), but this is also true that the said decree was set aside in an appeal preferred by Niranjn Singh and others.

And the matter was remitted to the trial court for decision afresh. However, subsequently, the said suit was dismissed as withdrawn. That being so, the argument being advanced by the learned senior counsel for the appellants that the said judgment would operate res judicata in the present proceedings, lack conviction and cannot be countenanced. Firstly, as observed by the first appellate court, even if the said suit was dismissed as withdrawn without liberty to file afresh, an order passed in this regard would not constitute a decree in terms of Section 2 (2) of the Code of Civil Procedure. Secondly, once the judgment and decree dated 24.12.1992, was set aside by the first appellate court and the matter was remitted, the said judgment became “non-existent” in law. One wonders as to how it could even be taken cognizance of. Fact remains, decree dated 09.11.1990, continued to exist. As regards, whether decree dated 09.11.1990, required registration, suffice it to say, plaintiffs never assailed the said decree either in the present suit or in any other proceedings. In any case, plaintiffs could never assail the said decree once it is demonstrated that Gurbachan Singh only had a life interest in the suit property and thus, he had no transferable title. In the absence of any right, title or interest in the suit property, plaintiffs lacked locus to question the decree dated 09.11.1990.

In the wake of the position, as set out above, and the conclusions that have concurrently been recorded by both the courts below, 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 14, 2015
Rajan

(Arun Palli)
Judge