

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

204

RSA No.400 of 2010 (O & M)

Date of Decision:29.09.2015

Maya Ram

....appellant

Versus

Bimla Devi

.....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Ashish Gupta, Advocate
for the appellant

Mr.Shish Pal Laler, Advocate
for the respondent

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was dismissed by the trial Court, vide judgment and decree dated 31.03.2008. As even the appeal preferred against the said decree failed, and, was dismissed on 15.09.2009, 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 the decree passed in Civil Suit No.71/81 on 22.01.1981 titled “Bimla Devi versus Surta” and mutation No.1911 sanctioned pursuant thereto on 18.07.1981 were null and void. By way of consequential relief, a decree for injunction was claimed restraining the defendant

from alienating the suit property in any manner and also from causing dispossession of the plaintiff. It was maintained that father of the plaintiff namely Surta was the owner to the extent of half share in land measuring 89 kanals 16 marlas, i.e. 44 kanals 18 marlas. The suit land was claimed to be ancestral property in the hands of Surta. In May 1999, when the defendant, who is the real sister of the plaintiff, attempted to dispossess the plaintiff, it transpired that she had obtained a decree dated 22.01.1981 qua the suit property. The said decree was alleged to have been obtained by fraud as Surta never appeared in the said proceedings. As the defendant refused to acknowledge the claim of the plaintiff and get the mutation cancelled, thus the suit.

In defence, it was pleaded, inter alia, that plaintiff was neither the owner nor in possession of the suit property. Post passing of the decree dated 22.01.1981, defendant had become exclusive owner in possession of the suit land. Surta had even executed a registered Will dated 11.04.1977 in her favour. Plaintiff was conscious of the Will executed by father of the defendant in her favour, from the very beginning, that is why, he did not mention the land in village Babain Tehsil Thanesar, that was transferred in his name on the basis of the said Will. The suit was hopelessly barred by time. The decree dated 22.01.1981 was indeed suffered by her father.

On a due and comprehensive consideration of the matter in issue and the evidence on record, the Courts below concluded that the plea set out by the plaintiff that the suit property

was coparcenary in nature, remained un-substantiated on record. Had the property been ancestral and coparcenary, post death of Surta, the same would have been mutated in the name of plaintiff Maya Ram and his sons. Further, the multiple alienations effected by Surta proved that plaintiff as also his sons were not coparceners in the suit property. Not just that, plaintiff admitted in his cross examination that Surta was the absolute owner of the suit property and vide Will dated 13.11.1987, he had transferred another land in favour of his son and, as a result mutation No.1710 (Ex.D8) was sanctioned in favour of the son of the plaintiff. Thus, Surta was the absolute owner of the suit property. As regards the decree dated 22.01.1981, plaintiff examined himself as PW6 and proved the copy of the plaint, written statement as also the statement made by Surta in Civil Suit No.71/81, on the basis whereof, the decree dated 22.01.1981 was passed. That being so, it was concluded that there was an admission by the plaintiff as regards the genuineness of the decree. Defendant testified in her statement that her father himself appeared in the Court in Civil Suit No.71/81 and filed the written statement conceding the claim of the defendant. His statement was also recorded, whereafter the decree dated 22.01.1981 was passed. So much so, post decree dated 22.01.1981, the suit property was mutated in favour of the defendant, vide mutation No.1911 on 18.07.1981. The present suit filed after 18 years on 04.01.2000, was apparently barred by time. Nothing was brought on record, least any cogent or credible evidence, to show that plaintiff was ever in possession of the suit land. On the contrary, Ex.D9 proved the actual

and cultivating possession of the defendant over the suit property. Jamabandis for the years 1984-85 (Ex.D3) and 1999-2000 (Ex.D4), khasra girdawari (Ex.D5) and excerpt (Ex.P13) showed that defendant Bimla Devi was the owner in possession.

In short, Surta was proved to the absolute owner of the suit property. Evidence on record proved that he suffered a decree dated 22.01.1981, in favour of the defendant i.e.his daughter Bimla Devi. Pursuant to the said decree, the suit property was mutated in her favour as back as on 18.07.1981. Concededly, Surta i.e.father of the parties died in the year 1996. During his life time, neither he nor plaintiff ever questioned the decree dated 22.01.1981. Plaintiff filed the present suit and assailed the decree dated 22.01.1981, after 18 years. Thus, the Courts below rightly concluded that the suit was grossly barred by time.

Learned counsel for the appellant could not point out as to how the findings that were concurrently recorded by both the Courts 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 in the present appeal. The same being devoid of merit is accordingly, dismissed.

29.09.2015

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I attest to the accuracy and
integrity of this document

(ARUN PALLI)
JUDGE