

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

**RSA No.1365 of 2012 (O & M)
Date of Decision:12.01.2015**

Kulwant Singh

....appellant

Versus

Surjit Kaur and others

.....respondents

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.Ashok Kumar Khunger, Advocate
for the appellant

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was dismissed by the trial Court vide judgement and decree dated 10.08.2010. Appeal preferred against the said decree failed and was dismissed on 05.12.2011. This is how, plaintiff-Kulwant Singh, 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 short, in a suit filed by the plaintiff, he prayed for possession by way of partition by metes and bounds as regards half share in shop No.57-A measuring 10' x 15', shown in red colour

in the site plan, situated at Ram Bara Bazar, Muktsar. And further, half share out of house measuring 250 square yards comprised in khasra No.1676/1202 (250 S.Y.), again shown in red colour, in the site plan appended with the plaint. A decree dated 13.12.1995, in respect of the said house was also assailed being wholly illegal and not binding on the rights of the plaintiff. A consequential relief of injunction restraining the defendants from alienating $\frac{1}{2}$ share of the plaintiff was also claimed. It was averred that father of the plaintiff namely Raja Singh s/o Nihal Singh happened to be the owner in possession of the suit property. He died on 05.02.2003 and post his death, plaintiff succeeded to his estate to the extent of half share. It was further averred that initially Raja Singh was married to Balbir Kaur and the plaintiff happened to be their son. Subsequently, he also contracted marriage with Sita Devi and from the said wedlock, they had two male issues namely Jaswant Singh and Gurmit Singh and two female issues namely Veero and Chhinderjit Kaur. As Jaswant Singh had died, thus, defendants No.1 to 3 were his heirs. Likewise, Gurmit Singh son of Raja Singh also expired and was survived by defendants No.4 to 6. Chhinderjit Kaur d/o Raja Singh died issueless. That being so, it was claimed that the plaintiff was entitled to half share out of the total suit property. And the defendants were entitled to remaining half share. It was maintained that the decree dated 13.12.1995 passed in Civil Suit No.341 dated 27.05.1995 titled as "Jaswant Singh etc. vs. Raja Singh", rendered by Additional Civil Judge (Senior Division), Muktsar, was wholly illegal and null and void as Raja Singh lacked capacity to suffer any such

decree. Defendants were requested quite a few times to accept the claims of the plaintiff but to no avail. Thus, the suit.

In defence, defendant No.7 pleaded, inter alia, that Raja Singh had no concern with the suit property at the time of his death. Further, plaintiff and his mother had already taken their shares in the properties owned by Raja Singh long time back. It was maintained that defendants No.1 to 3 were the lawful owners in possession of the suit property and defendant No.7 does not claim any right, title or interest therein. As regards the judgement and decree dated 13.12.1995, the same was pleaded to be legal and valid and, thus, the plaintiff had no reason to question the same.

In a separate written statement filed by defendants No.1 to 3, the pedigree table depicted in the plaint as regards the relationships of the parties was admitted. Further, it was maintained that Raja Singh died on 05.02.2003 and at the time of his death, he was neither owner nor in possession of the suit property. It was averred that as the plaintiff had not acquired any right or interest in the suit property and, thus, he was not entitled to claim half share therein. Further, it was almost 23 years back, plaintiff and his mother had separated from Raja Singh by taking their share from the family properties. So much so, a house constructed over the plot measuring 6 marlas comprising in khasra No.1587/10/1 situated at Kotkapura Road, Muktsar, that was purchased by Raja Singh in the name of his other wife i.e. Sita Devi was transferred in favour of the plaintiff. It was maintained that Raja Singh was the owner of the house in question and shop measuring 23' x 14'. But pursuant to a

family settlement Jaswant Singh son of Raja Singh became owner in possession of entire house, measuring 250 square yards. And he also became owner in possession of 1/3rd share out of the shop in question. The rest 2/3rd share in the said shop had fallen to the share of Gurmit Singh son of Raja Singh. In a suit filed by Jaswant Singh and Gurmit Singh against Raja Singh, said family settlement was accepted and a decree dated 13.12.1995 was passed. That being so, Raja Singh was left with no right, title or interest in the said properties. Subsequently, Gurmit Singh son of Raja Singh, out of his 2/3rd share in the said shop, sold an area measuring 2 feet x 4 inch x 25 feet (adjoining to the 1/3rd share of Jaswant Singh) to Jaswant Singh, vide sale deed dated 24.06.1998. Thus, Jaswant Singh was owner of his 1/3rd share acquired pursuant to a decree dated 13.12.1995 and an area measuring 2 feet x 4 inch x 25 feet, vide sale deed dated 24.06.1998. Resultantly, Jaswant Singh continued to be the owner in possession of the said house and the shop during his life time, and thereafter, his heirs. It was averred that Gurmit Singh, subsequently, sold a portion of the shop that was still left with him.

Trial Court, on an analysis of the matter in issue and the evidence on record, found that the plaintiff had sought to assail the judgement and decree dated 13.12.1995 (Ex.P5 and Ex.P6), after 10 years as the suit was filed on 22.10.2005. Accordingly, it was observed that the suit filed by the plaintiff was barred by time. The decree suffered by Raja Singh was never questioned either by Raja Singh during his life time or even by the

mother of the plaintiff and, in fact, by none for all these years. Further, pursuant to the decree dated 13.12.1995, the suit property was mutated in terms thereof in the record of rights and, thus, it was open to the plaintiff to assail the same. It was observed that the suit filed by the plaintiff was indeed for declaration and was, thus, time barred, though, it was styled as suit for possession on the basis of title in order to show that the same was within limitation. But the suit for possession on the basis of no title at air, even otherwise was not maintainable. On an analysis of the evidence on record, it was concluded that the plaintiff and his mother had separated from Raja Singh in the year 1987 and a house situated at K.K.Road, Muktsar, was given to the plaintiff vide judgement Ex.DW2/H and decree Ex.DW2/1, dated 01.04.1987. In fact, in para No.3 of the plaint in the said suit plaintiff had admitted that in a family settlement, the house that was the subject matter of the said suit had fallen to his share, and, thus, he was left with no other claim qua the other properties of Raja Singh. Despite, this being so, plaintiff intentionally concealed this aspect from the Court in the present suit. As regards judgement and decree dated 13.12.1995, it was observed that in a suit filed by Jaswant Singh and Gurmit Singh they had pleaded family settlement, the fact that was admitted by Raja Singh in his written statement and also in his statement made in the Court. And resultantly, a decree dated 13.12.1995 was passed. Accordingly, it was concluded that the decree dated 13.12.1995 did not create any right, title or interest in favour of Jaswant Singh and Gurmit Singh for the first time but merely acknowledged the family settlement that was earlier arrived at

between Jaswant Singh and Gurmit Singh with their father Raja Singh. Thus, the said decree did not require any registration. Accordingly, the suit was dismissed.

Being dissatisfied with the 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. Resultantly, the appeal too was dismissed.

I have heard learned counsel for the appellant at length and perused the RSA paper book.

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 thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Concededly, the suit property was originally owned by Raja Singh. Pursuant to a judgement and decree dated 13.12.1995, passed in Civil Suit No.341 of 27.05.1995, he bequeathed the suit property in favour of his two sons namely Jaswant Singh and Gurmit Singh on the basis of an earlier family settlement. Thus, the decree dated 13.12.1995, merely acknowledged the family settlement pursuant to which Jaswant Singh and Gurmit Singh had

become owners of the suit property and, thus, the decree dated 13.12.1995 was merely a declaration of their pre-existing rights. So much so, pursuant to the decree dated 13.12.1995, suit property was mutated in the name of said Jaswant Singh and Gurmit Singh and thus, they were recorded to be the owners in possession of the suit property in terms of the decree passed. Raja Singh remained alive for almost 8 years after passing of the said decree, as he died on 05.02.2003, but neither he nor anyone else questioned the decree dated 13.12.1995 for all these years. As is discernible from the records, plaintiff and his mother separated from Raja Singh in the year 1987 itself, with a purpose to transfer some property in their favour, a decree dated 01.04.1987 (Ex.DW2/1), was suffered by Raja Singh and his second wife Sita Devi in favour of plaintiff and a house owned by Sita Devi was transferred in favour of plaintiff. Ex facie, plaintiff failed to show as to how Raja Singh lacked any authority to suffer a decree dated 13.12.1995, in favour of his other two sons.

Learned counsel for the appellant could not show or point out as to how the findings that had concurrently been 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.

12.01.2015
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(ARUN PALLI)
JUDGE