

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

**RSA No.982 of 2011 (O & M)
Date of Decision:11.02.2015**

Kapoor Kaur and others

....appellants

Versus

Pritam 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.Ashish Gupta, Advocate for
Mr.Vikram Singh, Advocate
for the appellants

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiffs was dismissed by the trial Court vide judgement and decree dated 28.01.2009. Appeal preferred against the said decree failed, and, was dismissed on 16.11.2010. 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, plaintiffs prayed for a declaration that the judgement and decree dated 31.07.1986, passed in Civil Suit No.486/86 by the Court of Sh.S.K.Dhawan, the then S.J.IInd Class, Karnal, was wholly bogus, null and void and the same was a result of fraud. A decree for injunction was also claimed restraining the defendants from alienating the suit land in any manner. It was

averred that plaintiffs were the owners in possession of land measuring 16K out of the total land measuring 44K-2M, situated in village Ramana Ramani, Tehsil and District Karnal. As plaintiff was to obtain loan against the land in question, he started negotiating with some persons. However, when defendant got to know of this fact, he propagated that plaintiff was no longer the owner of the suit property and, thus, he could not obtain any loan against the suit land. Plaintiff claimed that he had got the suit land transferred in his favour, by virtue of a civil court decree and the revenue entries were accordingly corrected in his favour. However, plaintiff never suffered any such decree in favour of the defendant. However, on enquiry, it transpired that plaintiff had indeed obtained the decree dated 31.07.1986 by mis-representation and fraud and, thus, the same was liable to be set aside.

In defence, it was pleaded, inter alia, that plaintiff was no longer owner of the suit land. In fact, pursuant to the judgement and decree dated 31.07.1986, defendant had become the owner in possession of the suit property. It was denied that the decree in question was obtained by the defendant by way of fraud and misrepresentation. It was maintained that the plaintiff appeared in the court of S.J.IIInd Class, Karnal and filed a written statement conceding the claim of the defendant. Accordingly, the decree in question was passed in favour of the defendant. That being so, defendant prayed for dismissal of the suit.

On a consideration of the matter in issue and the evidence on record, the courts below found that the judgement and

decree dated 31.07.1986 (Ex.P3 and Ex.P4) revealed that defendant Mansa Singh had filed a suit against Bakshish Singh i.e.plaintiff, pursuant to a family settlement. Plaintiff Bakshish Singh, appeared in the said suit and even filed a written statement conceding the claim of the plaintiff. His statement was also separately recorded in this regard. Accordingly, the suit was decreed. It was observed that although the plaintiff had questioned the judgement and decree in question i.e.Ex.P3 and Ex.P4, but had still not placed on record the statement of the parties that were recorded by the Court in the said proceedings. Though, the decree in question was assailed by alleging fraud and misrepresentation, but no evidence, least cogent, was brought on record to substantiate the said plea. Plaintiff did not examine any expert to compare his thumb impression with the thumb impression on the written statement filed in Civil Suit No.486 of 1986. Likewise, he never got his thumb impression compared with the thumb impression that was affixed upon his statement recorded in the said suit. In fact, he questioned the said judgement and decree dated 31.07.1986, after more than 2 decades. The argument that the decree in question was not a registered document, and thus, conveys no title, was hardly of any consequence as plaintiff himself could not resile from his own statements made in the Court, particularly, after more than 20 years. In any case, the decree in question did not require registration. So much so, copy of the plaint (Ex.D1), in a suit filed by Mansa Singh (defendant) for injunction against Bakshish Singh (plaintiff), showed that there was a reference to the decree dated 31.07.1986 in the said plaint. Mansa Singh

(defendant) even filed a written statement (Ex.D2) in the said suit. Thus, he had due knowledge qua the judgement and decree dated 31.07.1986. That being so, the suit filed by the plaintiff was apparently barred by time. Since the limitation to seek any such declaration was three years. Accordingly, the suit was dismissed. Even the appeal preferred by the plaintiff against the said decree failed and was accordingly dismissed.

I have heard learned counsel for the appellants and perused the RSA paper book.

Learned 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. 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.

Needless to assert, for plaintiff to succeed, he was required to prove that the judgement and decree dated 31.07.1986, that was purported to have been suffered by the plaintiff in favour of the defendant was indeed a result of fraud and misrepresentation. Concededly, no evidence was led by the defendant to prove such a plea. Indisputably, plaintiff Bakshish Singh appeared in Civil Suit No.486 of 1986 and filed the written statement conceding the claim of the plaintiff. His statement to this effect was also separately recorded, which was again thumb marked by the plaintiff. Plea of the

plaintiff that the decree in question required registration was equally misconceived as the said decree was passed pursuant to a family settlement. That being so, the decree in question did not create a title in favour of the defendant in presentie but merely acknowledged the family settlement pursuant to which the defendant had acquired title in the suit property. Thus, the same did not require registration. So much so, the present suit was filed on 14.08.2002, after a gross and abnormal delay of 16 years and was indeed barred by time.

Learned counsel for the appellants 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.

11.02.2015
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(ARUN PALLI)
JUDGE