

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

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Regular Second Appeal No.3517 of 2012 (O&M)
Date of Decision: September 04, 2015

Gurdeep Singh and others

...Appellants

Versus

Harbans Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Rajni Bala, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the dismissal of the suit for declaration preferred by the appellants-plaintiffs to the effect that they are the owners in possession in equal shares of land measuring 1 kanal 5 marlas situated in village Thiraj, Tehsil and District Sirsa, and that the judgment and decree dated 25.01.1990 passed by the Additional Senior Sub Judge, Sirsa, in civil suit No.98 of 1990 titled as Darshan Singh Versus Lila Singh, declaring the respondents-defendants as owner in possession of the above said land on the basis of an oral exchange between the respondents-defendants and deceased Lila Singh and the consequential mutation No.2366 dated 10.07.1990 entered and sanctioned on the basis of said decree and other revenue records be set aside, injunction was also prayed for by the Civil Judge (Junior Division), Sirsa, on 22.11.2010, against which the appeal preferred by the appellants-plaintiffs stands dismissed on 11.04.2012 by the District Judge, Sirsa.

2. It is the contention of the learned counsel for the appellants-plaintiffs that the alleged oral exchange, on the basis of which the decree

has been passed, has not been given effect to as the land which is stated to have been exchanged between the respondents-defendants and deceased Lila Singh, has not been given possession of and as a matter of fact it does not exist. It was merely a paper transaction and nothing actually on the ground had been done. She further contends that the decree which has been obtained by the respondents-defendants in their favour is based upon fraud and misrepresentation and, therefore, not binding upon the appellants-plaintiffs and liable to be set aside. She contends that the findings recorded by the Courts below cannot be sustained.

3. I have considered the submissions made by the counsel for the appellants-plaintiffs and with her assistance have gone through the judgments passed by the Courts below but am afraid the contentions as raised by the counsel for the appellants-plaintiffs cannot be accepted. There is no doubt that in the pleadings such assertions, as has been projected by the counsel for the appellants-plaintiffs, have been made but unfortunately no evidence has been led by the appellants-plaintiffs in support of these assertions except for his bald statement before the trial Court. No Fingerprint Expert has been examined to show that the written statement as well as the statement made by deceased Lila Singh in the suit No.98 of 1990, which led to the passing of the decree dated 25.01.1990, was of some other person and not of Lila Singh. Lila Singh, it is admitted, had died about two to three years prior to the filing of the suit, which would mean that he had died in the year 2001. During his lifetime, he did not challenge the said decree, specially when mutation No.2366 dated 10.07.1990 had been entered and sanctioned on the basis of the said decree dated 25.01.1990.

Further in the cross-examination, appellant-plaintiff No.1 admitted that they

got knowledge of the decree after two to three years of the passing of the judgment and decree, whereas the suit has been filed in the year 2004.

4. If that be so, the suit is clearly time barred as well.

5. In view of the above, the findings as recorded by the Courts below cannot be faulted with.

6. Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

7. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

8. In view of the dismissal of the appeal itself, all the pending applications stand disposed of.

September 04, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**