

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

**Regular Second Appeal No.1114 of 2013 (O&M)
Date of decision: 09.03.2015**

Bishnu Bhagwan and another

.....Appellants

Versus

Ram Phal and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. N.C. Kinra, Advocate,
for the appellants.

Ritu Bahri, J.

Plaintiffs-appellants have come up in regular second appeal against the judgments of concurrent findings of fact recorded by both the Courts below i.e. Additional Civil Judge (Senior Division), Meham and the Additional District Judge, Rohtak, whereby their suit has been dismissed.

Plaintiffs-appellants filed a suit for declaration to the effect that the judgment and decree dated 16.02.1983 passed in civil suit No.2/1 dated 03.01.1983, titled as 'Ramphal etc. Vs. Bishnu Bhagwan etc.' along with mutation No.2760 dated 28.08.1986, was void, illegal, null and void. Further prayer was made for the relief of permanent injunction restraining the defendants-respondents from interfering into the joint possession of the plaintiffs over the suit property.

Upon notice, defendant-respondents filed written statement and controverted the allegations made by the plaintiff-appellants.

The trial Court, after going through the evidence led by the parties,

dismissed the suit filed by the plaintiff-appellants and held that the judgment and decree dated 16.02.1983 were not the result of fraud and impersonation. It was a consent decree and thereafter, mutation bearing No.2760 dated 28.08.1986 was sanctioned. As per the consent decree dated 16.02.1983, Bishnu Bhagwan and Krishan Bhagwan had relinquished their shares in favour of their brothers and as a result of this, $\frac{1}{2}$ share, which was inherited by them, was divided amongst seven brothers i.e. parties to the suit and all of them got $\frac{1}{7}$ th share each in the suit property. By way of consent decree, a family settlement had taken place.

The present suit was filed in the year 2006 i.e. after a period of 23 years of the judgment and decree dated 16.02.1983. In his cross-examination, Bishnu Bhagwan (PW-1) had admitted that all the brothers were residing separately since 1986 and he had mortgaged his land in favour of Co-operative Bank for installing tube well in the year 1996 after getting copies of jamabandi. Pursuant to the judgment and decree dated 16.02.1983, the mutation was sanctioned in the year 1986 and thereafter, the plaintiff-Bishnu Bhagwan had taken loan from the Co-operative Bank on the basis of jamabandi. Hence, he had the knowledge of mutation since 1986 as well as in 1996 when he took the loan. In the year 1997, a drain was carved out of their fields and he had received compensation to the extent of his share as per the revenue record. As per the admissions of Bishnu Bhagwan-plaintiff himself, he had the knowledge of the aforesaid judgment and decree in the years 1996 and 1997, whereas the present suit was filed in the year 2006 i.e. beyond the period of three years. Therefore, it was treated to be time barred. Mr. Vijay Kumar Rustagi, Handwriting and Fingerprints Expert (PW-5) submitted his report as Ex.PW5/A and gave his opinion that the signatures

on the written statement and *vakalatnama* said to be filed by the plaintiffs in the previous litigation were not signed by the same person i.e. Bishnu Bhagwan, who had signed the present plaint, *vakalatnama* and application. However, in his cross-examination, he stated that he had not made any comparison of the signatures of Bishnu Bhagwan which were put on the statements made in Court on 24.04.2007 and 22.05.2007. The trial Court treated it to be a major lacuna and drawback in the report of Vijay Kumar Rustagi, Handwriting and Fingerprints Expert (PW-5). The signatures in the Court were more authenticated and reliable and if, those signatures would have been compared, then it would have led more credibility to the report of the handwriting and fingerprints expert. At the same time, defendants-respondents had also examined handwriting and fingerprints expert as DW-1. In his cross-examination, he stated that the disputed signatures were written freely and in normal course of business. He admitted the signatures as correct. Both the standard and disputed signatures were both written freely and in normal course of business. There were similar kind of alignment in both the signatures. Reference was made to the deposition of B.S. Bhola, Advocate (PW-4), who was counsel for the plaintiffs in the previous suit. He stated that the plaintiffs were never impersonated in the previous suit. The trial Court accepted the report of DW-1 and held that it was not discrepant or false. Ultimately, the suit was dismissed. The lower appellate Court affirmed the findings recorded by the trial Court and dismissed the appeal.

A perusal of the judgment passed by both the Courts below shows that the plaintiffs-appellants were all along aware about the judgment and decree dated 16.02.1983. They were in possession of their separate shares

after the mutation was sanctioned on the basis of the aforesaid decree. They took a loan by mortgaging their land in their possession and also claimed compensation from the Government when a drain was carved out of their land. In view of the evidence led by the parties, the findings of fact recorded by both the Courts below do not require any interference.

No substantial question of law arises for consideration.

Dismissed.

09.03.2015
ajp

(RITU BAHRI)
JUDGE