

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

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**RSA No.1780 of 2013 (O & M)
Date of Decision:24.09.2015**

Geeta Kaur Bhasin and others

....appellants

Versus

Raminder 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.Akshay Bhan, Senior Advocate with
Mr.Santosh Sharma, Advocate
for the appellants

ARUN PALLI, J.(ORAL):-

CM No.4734-C of 2013

There is a delay of 35 days in re-filing the appeal.

For the reasons set out in the application, that is duly supported by an affidavit, delay of 35 days in re-filing the appeal, is condoned.

CM stands disposed of.

RSA No.1780 of 2013 (O & M)

Suit filed by the plaintiff was dismissed by the trial Court, vide judgment and decree dated 15.09.2010. As even the appeal preferred against the said decree failed, and, was dismissed

vide judgment dated 21.09.2012, the plaintiff is before this Court. 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 he was in joint possession as owner to the extent of 1/6th share in the suit property i.e. plot No.9 measuring 666 sq.yards, situated in Vivek Vihar Ambala, and the decree dated 13.06.1988 rendered in favour of his mother i.e. Savinder Kaur, was wholly illegal and void, and, not binding upon his rights. Consequently, the agreement to sell dated 20.10.1987 executed by Savinder Kaur in favour of defendant No.6, qua the suit property, was of no consequence. By way of consequential relief, a decree for injunction was claimed restraining the defendants from alienating the property in any manner. Originally, the suit property was owned by Harnam Singh, father of the plaintiff and defendants No.1 to 5. Post his death on 20.09.1986, at Zahidan (Iran), his estate was succeeded to, by his widow i.e. Savinder Kaur, four sons including the plaintiff and three daughters. Therefore, the plaintiff had 1/8th share in the property. However, Jasbir Singh defendant No.1 in collusion with defendant No.6 Keshav Chand, forged an agreement to sell as regards the plot in question by forging the signatures of Savinder Kaur and defendants No.2 to 5. In any case, Savinder Kaur had no authority to exclusively enter into an agreement in favour of defendant No.6. Decree dated 13.06.1988, that was purportedly suffered by plaintiff and his brothers and sisters in favour of his mother Savinder Kaur was not sustainable as the same was obtained by fraud. Post death

of Savinder Kaur and his brother Surinder Pal Singh, who died issueless, plaintiff became owner of the suit property to the extent of 1/6th share. Plaintiff had not executed any power of attorney in favour of defendant No.1 or any of his brothers. Therefore, defendant No.1 was not authorized to appear and make a statement on his behalf, in a suit, in which decree dated 13.06.1988 was passed. Thus, the suit.

No written statement was filed on behalf of respondents No.1 to 5. In the written statement filed on behalf of defendant No.6, it was pleaded, inter alia, that the suit was hopelessly barred by time. It was denied that defendant No.6 had obtained a decree for specific performance of the agreement to sell dated 20.10.1987, by way of fraud. In fact, as a consequence of the said decree, sale deed qua the suit property was executed and registered in favour of defendant No.6. As regards the decree dated 13.06.1988, in a suit filed by Savinder Kaur against her sons and daughters, they all appeared through their counsel Sh.Jagdeep Jain, Advocate and filed the written statement admitting the claim of their mother. Accordingly, it was prayed that the suit was liable to be dismissed.

On a due and comprehensive consideration of the matter in issue and the evidence on record, the Courts below concurrently concluded that in a suit filed by Savinder Kaur, she prayed for a declaration that she was the owner in possession of the property i.e.House No.23-24, Ram Nagar, Ambala City, suit property i.e.plot No.9, Vivek Vihar, Ambala City, and all the rights in the business being undertaken under the name and style M/s Bhasin

Brothers. Certified copy of the judgment dated 13.06.1988 (Ex.D2), revealed that plaintiff Paramjit Singh, was arrayed as defendant No.4 in the said suit and he appeared through his duly constituted power of attorney holder and filed the admitted written statement conceding the claim of his mother. Statement of his attorney and the other defendants were duly recorded in this regard. The decree dated 13.06.1988 was never questioned by any of the sons and daughters of Savinder Kaur, except the plaintiff. So much so, even the plaintiff did not question the decree dated 13.06.1988 as regards the other property, except the plot in question. Evidence on record proved that there was hardly any illegality or infirmity, the decree dated 13.06.1988, suffered from. The plea that the said decree was a result of fraud and misrepresentation, remained unsubstantiated on record, for lack of cogent evidence on record. So much so, even the requisite pleadings in this regard were not set out in the plaint. Likewise, the plea of the plaintiff that he was residing in Zahidan and never authorized his brother Jasbir Singh to appear and make statement on his behalf, also remained unsubstantiated on record. In fact, wife of the plaintiff namely Geeta Kaur(PW1), conceded in her cross-examination that her husband Paramjit Singh would often visit India and was on extremely good terms with his brother Jasbir Singh. In fact, entire family would respect Jasbir Singh, being the eldest member in the family. As the decree dated 13.06.1988 was predicated upon a family settlement, the same did not require registration. The agreement to sell dated 20.10.1987 executed in favour of defendant No.6 was questioned for lack of capacity of

Savinder Kaur, but once vide decree dated 13.06.1988, she was held to be the exclusive owner of the suit property, challenge to the agreement pales into insignificance. In fact, a suit filed by defendant No.6 seeking specific performance of the agreement to sell dated 20.10.1987 was decreed in his favour on 18.12.1998. As plaintiff did not choose to contest the said suit despite service, the application moved by him under Order 9 Rule 13 of the CPC was dismissed by the trial Court and eventually affirmed by this Court vide order dated 02.09.2013, in Civil Revision No.2942 of 2013. Be that as it may, the fact remains that for plaintiff to succeed, he was required to show that the decree dated 13.06.1988, was indeed a result of fraud and was, thus, not binding on his rights. In the wake of the evidence on record, both the Courts below concluded that the said decree did not suffer from any infirmity. Nothing could be pointed out even during the course of hearing even before this Court, as to how the said decree was unsustainable. Once that is so, it could not be maintained, least successfully, that Savinder Kaur did not possess a transferable title. Therefore, the agreement to sell dated 20.10.1987, executed in favour of defendant No.6 could not be questioned. In any case, the decree for specific performance of the agreement to sell has already been passed in favour of defendant No.6, on 18.12.1998 and has since attained finality. Ex facie, it appears that the present suit was instituted by the plaintiff with a sole purpose to defeat the rights of defendant No.6, who had obtained a valid decree dated 18.12.1998 in his favour. So much so, the decree dated 13.06.1988 was questioned by the plaintiff after over 15 years

by filing the present suit.

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.

24.09.2015

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**(ARUN PALLI)
JUDGE**