

RSA No. 5099 of 2013 (O&M)

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

RSA No. 5099 of 2013 (O&M)

Date of Decision: October 05, 2015

Ravinder Singh & others

...Appellants

Versus

Lakhwinder Singh & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rishi Nijhawan, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J.:

CM No.13703-C of 2013

Prayer in this application is for condonation of delay of 21 days in re-filing the appeal.

For the reasons mentioned in the application which is duly supported by the affidavit of Ravinder Singh-appellant No.1, the same stands allowed. Delay of 21 days in re-filing the appeal, stands condoned.

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Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Guhla, dated 25.02.2011, whereby, the suit preferred by the appellant-plaintiffs for declaration to the effect that the decree passed in Civil Suit No.859 of

1986, titled as 'Lakhvinder Singh Vs. Om Parkash & others' dated 15.12.1986 and the consequential Mutation No.1599 sanctioned in favour of respondent-defendant No.1 Lakhvinder Singh, was obtained by playing fraud on the Court and the same is, thus, null, void, illegal and nonest and that as a consequence thereof, the appellant-plaintiffs are joint owners in possession of the suit property which was its subject matter, appeal against which stands dismissed by the District Judge, Kaithal, on 22.05.2013.

2. It is the contention of the learned counsel for the appellants that the Lower Appellate Court has held that the decree dated 15.12.1986 (Ex.P-19) under challenge is not a legal documents, rather, the same is void *ab initio* and *nonest* and the respondent-defendants cannot claim themselves to be the owners in possession on the strength of the said decree but still the Court has proceeded to dismiss the suit of the appellant-plaintiffs holding that the appellants do not have any *locus standi* for claiming such a declaration, which cannot be sustained. He contends that the said judgment and decree has been held to have been suffered by respondent-defendant No.2 Om Parkash (father of the appellants) in favour of respondent-defendant No.1-Lakhvinder Singh on the basis of an family settlement, whereas, respondent-defendant No.1 is a 'Labana Sikh' and respondent-defendant No.2 (father of the appellants) is a 'Rajput' by caste. Thus, the basis, disclosed in the

plaint which resulted into passing of the judgment and decree dated 15.12.1986 (Ex.P-19) is false and, therefore, the same was obtained on the basis of a fraud having been played on the Court. After the said finding which has been rightly given by the Lower Appellate Court, the declaration, as prayed for, should have been granted and the suit of the appellant-plaintiffs decreed. He, thus, prays that the judgment and decree passed by the Courts below deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellants and with his assistance have gone through the impugned judgments but do not find any illegality in the judgment and decree passed by the learned District Judge, Kaithal, dated 22.05.2013.

4. On the basis of the pleadings and the evidence led by the parties, the Courts have proceeded to evaluate the same and on proper consideration thereof, have returned findings which cannot be faulted with. The appellant-plaintiffs approached the Court by asserting that the property at the hands of their father Om Parkash was a co-parcenary property and therefore, the judgment and decree could not have been suffered by him dated 15.12.1986. They asserted themselves to be co-parceners alongwith respondent-defendant No.2 Om Parkash. This contention of the plaintiffs have been rightly rejected on the basis of the evidence which has been

brought on record and detailed in para 10 of the judgment of the Lower Appellate Court. On considering the Mutation Ex.P-6, it has been recorded that on the death of Desha, father of respondent-defendant No.2 Om Parkash, the property was mutated in favour of Smt. Premi Devi widow of Mangal Singh son of Desha and Om Parkash and Main Pal, sons of Desha as well as Omi, Bala Devi, Suman Devi and Krishna Devi, daughters of Desha. All the eight persons succeeded in persons in equal shares. This Mutation Ex.P-6 was attested under Section 8 of the Hindu Succession Act. The property devolved upon a Hindu as per Section 8 of the Hindu Succession Act, would not be Hindu Undivided Family as held by the Supreme Court in Yudhister Vs. Ashok Kumar, AIR 1987 (SC) 558 and **Bhanwar Singh Vs. Puran & others, 2008 (2) RCR (Civil) (SC) 99**. The property, thus, inherited under Section 8 of the Hindu Succession Act, by Om Parkash respondent-defendant No.2 (father of the plaintiffs) cannot be termed to be co-parcenary property so far as the plaintiffs are concerned.

5. That apart, the judgment and decree was suffered by respondent-defendant No.2 Om Parkash on 15.12.1986, whereas, the eldest among the plaintiffs who are sons of respondent-defendant No.2 Om Parkash, Ravinder was born on 31.11.1988 as per Ex.D-1, his birth certificate. Thus, on the date when the impugned decree was passed, Om Parkash-defendant No.2 was issue-less and as per

the judgment of the Supreme Court in **Sheela Devi Vs. Lal Chand, 2006 (4) RCR (Civil) 912**, a son born to male Hindu after alienation of the property cannot object to alienation, thus, the appellant-plaintiffs cannot object to the judgment and decree dated 15.12.1986 (Ex.P-19).

6. Further, limitation to challenge the alienation is 12 years and as per the judgment of the Privy Council in **Ranodip Singh and others Vs. Parmeshwer Parshad and others, AIR 1925 Privy Council 33**, the subsequent birth of co-parcener does not create fresh starting point of limitation and three years extension after majority cannot be claimed by a person not born at the time of alienation. In view of this judicial pronouncement, the appellant-plaintiffs have rightly be held to be not entitled to the said benefit and the challenge of the decree dated 15.12.1986 (Ex.P-19) by way of the present suit which has been filed on 07.12.2005 is hopelessly time barred as the limitation to assail the decree of the year 1986 started from the date it was suffered and could be challenged within a period of 12 years from the date of such passing of the decree. It may not be out of way to mention here that respondent-defendant No.2 Om Parkash never challenged the same on the ground that the same has been obtained by fraud or misrepresentation.

7. Although, decree dated 15.12.1986 (Ex.P-19) has been held to be void *ab initio* and not conferring any title upon the

respondent-defendant but for claiming a decree of declaration, *locus standi* of the plaintiffs is also to be seen and proved which as per the above, has not been established. While going through the judgments passed by the Courts below, it is apparent that the present litigation is based upon dishonesty and the Court cannot be a part to such dishonest litigation at the behest of the parties. The fraud which has been played upon the Courts stands established and thus, the Courts have rightly dis-entitled the parties to the benefit of the said decree dated 15.12.1986 (Ex.P-19) but that does not confer any right in favour of the appellant-plaintiffs who have approached the Court through their mother as a face projected on behalf of respondent-defendant No.2 Om Parkash who was himself a party to the fraud having been played upon the court and the public exchequer. This Court would have burdened the appellants with heavy cost but for the fact that the counsel who had appeared for the appellant pleaded for taking a lenient view in the matter. In view of the above, finding no merit in the present appeal, the same deserves dismissal.

8. A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

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9. No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

October 05, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE