

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3101 of 2015 (O&M)
Date of Decision: July 06, 2015

Smt.Dhakeli and others

...Appellants

Versus

Rajender and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sudhir Aggarwal, Advocate
 for the appellants.

INDERJIT SINGH, J.

Appellants-plaintiffs Smt.Dhakeli, Smt.Tejo, Smt.Mukti and Parkash have filed this regular second appeal against respondents-defendants Rajender and Smt.Supedi, challenging the impugned judgment and decree dated 12.03.2013 passed by learned Civil Judge (Senior Division) Palwal, vide which the suit filed by the plaintiffs-appellants for declaration and permanent injunction was dismissed and also the judgment and decree dated 18.02.2015 passed by learned Addl. District Judge, Palwal, vide which the appeal filed by the appellants was dismissed.

The brief facts of the case are that plaintiffs-appellants Smt.Tejo, Smt.Mukti, Parkash and Smt.Dhakeli filed a suit against defendants-respondents Rajender, Smt.Supedi and Raj Pal for declaration to the effect that plaintiffs are owners in possession of

land measuring 68 kanals 14 marlas to the extent of 1/5th share each and that the judgment and decree dated 09.02.1993 passed in civil suit No.113 of 1993, mutation No.3208 dated 28.05.1998 and subsequent revenue entries showing the defendant No.1 as owner in possession of the suit land, are illegal, null and void, wrong and are liable to be set aside, with a consequential relief of permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiffs over the suit land and also for restraining the defendants from alienating the suit land. It is also stated that suit land is ancestral land/property of the parties to the suit. Defendant No.3 is having no son and he has only five daughters, one of whom namely Somoti had already died. It is also stated that the plaintiffs have their right by birth in the suit land being the ancestral land of the parties to the suit and defendant No.3 had or have no right to deprive the plaintiffs from their legitimate right in the suit land. It is also stated that the impugned judgment and decree dated 09.02.1993 is an act of fraud, misrepresentation and collusion on the part of the defendants.

In the written statement, defendants took preliminary objections regarding maintainability, locus standi, estoppel, cause of action, limitation etc. and denied the averments on merit while stating that defendant No.1 is adopted son of defendant No.3 and has got status of a son. Defendant No.1 and his parents were residing with defendant No.3. It is denied that suit land is ancestral property.

Issues were framed. Both the parties led the evidence.

Learned Civil Judge (Senior Division) Palwal, after discussing the

evidence on record, dismissed the suit filed by the plaintiffs vide judgment and decree dated 12.03.2013. Aggrieved from the judgment and decree passed by learned Civil Judge, appellants-plaintiffs filed an appeal before learned District Judge, Palwal and learned Addl. District Judge, Palwal, also upheld the findings given by learned Civil Judge and dismissed the appeal vide judgment and decree dated 18.02.2015.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellants-plaintiffs.

Learned counsel for the appellants argued that the suit property is ancestral property and the plaintiffs are the coparceners in the property and have right by birth, therefore, they have locus standi to challenge the consent decree dated 09.02.1993, which is result of fraud and misrepresentation and collusion of defendant No.1 and defendant No.3 and therefore, the decree is liable to be set aside.

I have heard learned counsel for the appellants and have gone through the record.

From the record, I find that the plaintiffs are the daughters of Rajmal-defendant No.3 and Parkash-plaintiff No.3 is son of deceased Somoti, who was daughter of Rajmal. The consent decree has been passed in the year 1993. Defendant No.3 is not challenging the decree on the ground of any fraud or misrepresentation. Even in the written statement filed in the Court, defendant No.3-Rajmal denied the averments of the plaintiffs. In the year 1993, the plaintiffs being

daughters of Rajmal and son of deceased daughter of Rajmal, were not coparceners. At that time, they had no right in the ancestral property as coparceners by birth, therefore, the plaintiffs have no locus standi to file the suit. Now, after the amendment in the Hindu Law, which is much later on in the year 2005, a right has been given to the daughters also in ancestral property.

Furthermore, at the time of filing of the suit, Rajmal was alive and he was one of the defendant. Only Rajmal can challenge the decree and that is also within three years of passing of the decree and the plaintiffs being daughter of Rajmal, having no right at the time of passing of the decree, cannot challenge the same. Otherwise also, the suit is time barred because the decree can be challenged within three years.

In view of the above discussion, I find that the findings given by both the Courts below are correct and as per law. The findings of the Courts below are concurrent, as per evidence and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

July 06, 2015
Vgulati

(INDERJIT SINGH)
JUDGE