

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 3477 of 2015 (O&M)

Date of decision : July 27, 2015

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Jai Parkash and another

.....Appellants

Versus

Chetan Dass and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Yogesh Sharma, Advocate for the appellants.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

C.M No. 8427-C of 2015

C.M is allowed.

For the reasons mentioned in the application, delay of 182 days in refiling the appeal is condoned.

RSA No. 3477 of 2015

Appellants-defendants no. 1 & 2 (hereinafter referred to as 'the defendants no. 1 & 2') have come up in regular second appeal against the judgment dated 4.11.2010 passed by the Civil Judge (Junior Division), Faridabad whereby the suit of the respondents-plaintiffs (hereinafter referred to as 'the plaintiffs') has been decreed by recording concurrent findings of facts and the judgment dated

4.9.2014 passed by Additional District Judge, Faridabad, whereby the appeal filed by the defendants no. 1 & 2 against the judgment of the trial Court was dismissed.

The plaintiffs and defendants no. 2 to 6 were recorded as co-sharers/co-owners to the extent of 1/4th share in respect of the suit land in the jamabandi for the year 1968-69. The grievance of the plaintiff is that defendant no.2 Asa Nand in connivance with the revenue officials got the names of plaintiffs as well as defendants no. 3 to 6 deleted from the column of ownership as well as possession of the subsequent jamabandi for the year 1973-74. The plaintiffs and defendants no. 3 to 6 never relinquished, abandoned, surrendered their ownership as well as possessory rights in the said suit land in favour of defendant no.2 or defendant no. 1, at any point of time. Defendant no.2 thereafter further succeeded in transferring his alleged rights in the suit land in favour of his son Jai Prakash i.e defendant no.1 by means of a collusive decree dated 22.10.1994 passed by the Court of Sub-Judge, 1st Class, Faridabad in Suit no. 347 and consequently mutation no. 5605 was also got sanctioned in the name of defendant no. 1 on 21.7.1998. The plaintiff by filing the present suit is seeking that the revenue record for the year 1968-69 and the judgment and decree dated 22.10.1994 was result of fraud and was liable to be declared null and void.

On notice, defendants no. 1 & 2 filed the written statement raising the objection that the suit was barred by Limitation Act. It was stated therein that the possession of the defendants no. 1

& 2 over the suit land was exclusive, peaceful to the knowledge of the plaintiffs and defendants no. 3 to 6 since the last more than 37 years and hence the defendants have become owners of the suit land by way of adverse possession. It was admitted that the plaintiffs and defendants no. 2 to 6 were recorded as co-sharers/co-owners to the extent of 1/4th share in joint possession of the suit land in the jamabandi 1968-69. It was denied that they continued to be in joint possession of the suit land. The plaintiffs and remaining defendants except defendant no.2 never remained in possession over any part of the land in question. The entries in the name of defendant no.2 w.e.f the year 1973-74 and in the Jamabandis subsequent thereto are not illegal and forged entries. Defendant no. 2 suffered a decree in favour of defendant no.1 on 22.10.1994 and mutation thereof was also got sanctioned on 21.7.1998.

Following issues were framed by the trial Court:

- 1. Whether entries of Khasra Girdawri and Jamabandi in the year of 1968-69 are null and void, nonest and not binding on the rights of the plaintiff ? OPP*
- 2. Whether plaintiffs are joints owner in possession of the land in question ? OPP*
- 3. Whether the judgment and decree dated 22.10.1994 passed in suit titled Jai Parkash Vs. Asa Nand and mutation no. 5605 are illegal, null*

and void and not binding on the rights of the plaintiff ? OPP

4. Whether plaintiff is entitled for decree , of permanent injunction as prayed for ? OPP

5. Whether the suit is barred by Limitation act ? OPD

6. Whether the plaintiffs have locus standi and cause of action to file the present suit ? OPD

7. Whether the plaintiff has not come to the Court with clean hands ? OPD

8. Whether the suit is bad for non joinder of necessary parties ?OPD

The case of the defendants before the trial Court was that plaintiff had executed a GPA in favour of defendant no.2. This stand of the defendant has been rejected by both the Courts below on the ground that had the transfer been in favour of defendant no.2 on account of GPA, the same would have been referred to in the column of remarks in the jamabandi for the year 1973-74. The defendant no.2 admitted in his cross-examination that Patwari acted on his own and recorded the name of defendant no.2 at the time of preparing the Jamabandi for the year 1973-74. Apart from a vague statement, defendants were not able to lead any evidence to show that in an adjustment land was given by defendant no.2 to the plaintiffs and defendants no. 3 to 6. PW-1, Halqa Patwari has stated that in the

Jamabandi for the year 1968-69 names of the plaintiffs and defendants nos. 3 to 6 exist in the column of ownership. However, as per deposition of DW-2, possession of the suit property was exclusively with defendants no.1 & 2. The findings on issue no. 1 & 2 was decided in favour of the plaintiffs and they were held co-owners to the extent of 1/4th share in the suit property. In view of the above finding given by the trial Court, issue no.3 was decided against the defendants. Defendant no.2 who was not himself exclusive owner of the suit property could not transfer the same in favour of his son and hence the judgment dated 22.10.1994 passed in the Suit no. 347 was treated to be null and void. The plaintiffs were held entitled to a decree of permanent injunction against dispossession at the hands of respondents no. 1 & 2. On the ground of limitation, it was held that the cause of action to the plaintiffs arose when they became apprehensive and suspicious about the conduct of defendants 1 & 2 and thereafter they obtained the copies of revenue record of Halqa Patwari on 12.1.2003 and 19.1.2003. The period of limitation was to be counted from 2003 and the suit was within limitation. The plaintiffs did not disclose about the GPA Ex. D-1 executed by the plaintiffs in favour of defendants. This GPA was revoked in the year 1978 and the signatures of defendant no.2 Asa Nand not to use the same were obtained by PW-2. Both the Courts have held that non-disclosure of the said GPA by the plaintiffs is not a ground to deprive the plaintiffs of the relief claimed. After examining oral as well as documentary evidence, the trial Court decreed the suit of the

plaintiffs on 4.11.2010.

The lower appellate Court, on appeal, has affirmed the findings of facts recorded by the trial Court on all the issues. In paragraph 14 of the judgment of the lower appellate Court, it has been observed that PW-1, Vikram Singh Patwari also produced the original record and deposed that as per Jamabandi for the year 1968-69, plaintiffs and defendants no. 2 to 6 were recorded as owners in possession of the suit land but as per jamabandi for the year 1973-74, only Asa Nand defendant no.2 was shown to be owner in possession of the suit land. This fact was not disputed by the defendants in the written statement. The only ground taken by defendant no.2 was that they became owners in possession on the basis of the family settlement but this fact was not written in the written statement nor any evidence was led. Since the entry in the jamabandi and the judgment in the civil suit no. 347/94 titled as Jai Parkash vs. Asa Nand and consequent mutation no. 5605 were held to be illegal null and void, the above said findings were affirmed in favour of the plaintiffs in view of the judgments **Kashi Ram vs. Harbhajan Singh Bhajji, 2003 (2) RCR (Civil) 752, Harji and another vs. Smadh Baba Vijay Ram Chela Mangal Dass and 2003 (2) RCR (Civil) 666** and **Paramjit Singh vs. Jor Singh 1998 (1) RCR (Civil) 209**. As far as the limitation was concerned, the suit was held to be well within limitation in view of the judgment in the case of **Mange and another vs. Ramesh and others 2011 (4) RCR (Civil) 72**, wherein the suit was filed for declaration and joint

possession on account of removal of name of plaintiffs from ownership in revenue record and when plaintiffs are owners in possession of the land to the extent of their shares mere wrong revenue entries would not be sufficient to bar the suit by limitation. Simply non possession was not a factor to oust the co-sharer. Something more positive was required to be done. The appeal was dismissed. Reference was also made to judgments in the cases of **Govindammal vs. R. Perumal Chettair 2007 (3) RCR (Civil) 569** and **Surinder Kumar vs. Vidya Devi, 2012 (1) Civil Court Cases 102.**

After going through the judgments passed by both the Courts, counsel for the appellants-defendants no. 1 & 2 has not been able to refer to any evidence which was misread. Admission of the defendants that in the jamabandi for the year 1968-69, the plaintiffs and defendants no. 2 to 6 were recorded as co-sharers/co-owners to the extent of 1/4th share in joint possession of the suit land and there was change in the jamabandi in the year 1978-79 supported the case of the plaintiffs that the entries in the revenue record have been changed to their detriment despite the fact that they were recorded as co-sharers in the suit land.

The judgments passed by both the Courts do not suffer from any misreading of evidence and law. No substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

July 27, 2015

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**(RITU BAHRI)
JUDGE**