

117

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

RSA-4018-2015

Date of decision : 22.12.2015

Jaspal Singh

...Appellant

Versus

Didar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kamal Sharma, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is in regular second appeal against the concurrent findings of the fact whereby, the suit for declaration, possession and for permanent injunction, setting aside judgment and decree dated 11.05.1984 passed in Civil Suit No.848 of 01.12.1983, titled as "*Tulsa Singh & others V/s Sadhu Singh*" in respect of the land measuring 21 Kanals 4 Marlas comprised in Khasra Nos.24//8(3-13), 40//19 (5-19), 20 (6-3), 21 (3-11), 46 (0-18), 40//48 (1-0) situated within the revenue estate of Village Dharamgarh, Tehsil Rajpura, District Patiala as per jamabandi for the year 1978-79 sought to be declared as illegal, null and void, has been dismissed.

Mr. Kamal Sharma, Advocate appearing on behalf of the appellant-plaintiff submits that Sadhu Singh S/o Jeet Singh could not have suffered the aforementioned judgment and decree as the property in his hands was ancestral. At the time of the judgment

and decree, the appellant-plaintiff was minor. Since her date of birth is of the year 1977, she attained the majority in the year 1995. Sadhu Singh died in the year 2008 and after acquiring the knowledge of the aforementioned judgment and decree, the suit was filed on 10.10.2008. Umpteen number of documentary evidence has been brought on record to show the property at the hands of Jeet Singh was ancestral. Even, Sadhu Singh had sold the land which was inherited by the Jeet Singh, after the judgment and decree, possession was of Sadhu Singh. He further submits that had been those facts noticed, the civil suit was liable to be decreed, thus there is illegality and perversity in the order, much less, substantial questions of law arises to be determined by this Court.

I have heard the learned counsel for the appellant and appraised the paper book as well as seen the record handed over during the course of the arguments.

On the perusal of the sale deed Ex.P-3, the khasra numbers are entirely different one as mentioned in the judgment and decree dated 11.05.1984. Be that as it may, in order to prove the property at the hands of the Sadhu Singh being ancestral, the appellant-plaintiff was required to prove on record kursinama/original excerpt. No such documents have been brought on record. Since, the appellant-plaintiff being 4th generation was required to prove that the property had fallen at the hands of Sadhu Singh from his grand-father. No revenue record, in this regard, has been placed on record and rightly so, the trial Court declined such relief.

There is another aspect of the matter. Sadhu Singh remained alive till 2008 and during his life time, he has not challenged the judgment and decree. Nothing has been explained or proved that how a fraud had been played upon Sadhu Singh, in essence, the ingredients of Order 6 Rule 4 of the Code of Civil Procedure are conspicuously wanting. During the cross-examination, the appellant-plaintiff to a specific questions admitted that Sadhu Singh appraised him on many times about passing of the judgment and decree dated 11.05.1984. The relevant para of the cross-examination reads thus:-

"Sadhu Singh told me during his life time so many times that he has suffered a decree in favour of Tulsa Singh and Didar Singh."

Keeping in view the aforementioned facts, the suit in the year 2008 was not maintainable, much less, barred by law of limitation.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by both the Courts below, as these are based upon the appreciation of the oral and documentary evidence, much less, no substantial questions of law arises to be determined by this Court.

Accordingly, the appeal is dismissed.

22.12.2015
yogesh

(AMIT RAWAL)
JUDGE