

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.422 of 2015
Date of decision 07.04. 2015.

Kamlesh Rani

..... Appellant.

versus

Ranajit Kaur and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

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?

Present : Mr. P.M.Kansal, Advocate for the appellant.

K.C.PURI, J.

This is a regular second appeal directed by defendant/appellant against the judgment and decree dated 11.09.2014 passed by Shri Sanjay Agnihotri, Additional District Judge, Sangrur vide which the appeal preferred by defendant No.3/appellant against the judgment and decree dated 21.1.2012 passed by Shri Sumit Bhalla, Civil Judge (Junior Division), Dhuri was dismissed.

2. The facts in short are that plaintiff filed suit for possession that they are owners in possession of the suit land and the judgment and decree dated 22.11.2001 decided on 21.9.2002 passed by Shri Mandeep Singh

Dhillon, the then Civil Judge (Junior Division), Dhuri being obtained fraudulently be declared as null and void.

3. It is alleged that Bant Singh was the owner in possession of the' suit property, mentioned in the head note of the plaint. Defendants No.1 and 2 are owners of the land measuring,7 kanals 18 marlas being purchased from Major Singh and land measuring 9 kanals 15 marlas having inherited the same from Smt. Mohinder Kaur, mother of the plaintiffs and the defendants No.1 and 2. Plaintiffs are married and residing with their husbands at their in-laws house. In the year 1993, Kuldeep Singh and Gobinder Singh defendants No.1 and 2 filed a civil suit against their father Bant Singh for obtaining the consent decree of his land in their favour. During the pendency of the suit, Bant Singh got annoyed with the defendants No.1and 2 and appeared to be reluctant to suffer the consent decree. He also left the house and could not be traced for some time. It appears that being simpleton he fell into the trap laid by defendant No.3 Kamlesh Rani and the latter got executed a fake Karevanama from the former and also got executed a fake agreement to sell dated 22.09.1993 regarding one killa of land to derive undue benefit for herself. Ultimately, Bant Singh was murdered and an FIR No.72 dated 04.06.1994 under sections 302, 201, 506, 364, 120-B, 148, 149 of the Indian Penal Code (in short- the IPC) was registered against Kuldeep Singh defendant no.1, Paramjit Kaur, Gobinder Singh defendant no.2, Ranit Kaur plaintiff no.1 and five other persons of the families of the in~laws of the sons and daughters of Bant Singh, on the statement of Kamlesh Rani defendant No.3,

who alleged that she had contracted Kareva with Bant Singh on 08.06.1993 and had obtained divorce from her previous husband Mool Chand from the Court of Additional District Judge, Sangrur on 27.07.1993 and was the widow of Bant Singh deceased. The defendants No.1 and 2 were convicted for the murder of their father and remaining accused were acquitted and the said decision attained finality. Therefore, Kuldeep Singh, and Gobinder Singh were disqualified from inheriting their father. Bant Singh being murderers. During the pendency of the suit No.267 of 1993, after the murder of Bant Singh, Kamlesh Rani defendant No.3 filed application under order 22 rule 4 CPC for being impleaded as legal representative of Bant Singh deceased on the strength of Kareva Nama and decree of divorce. Vide its order dated 06.10.2001, the then learned Additional Civil Judge (Sr. Div.), Dhuri ordered Kamlesh Rani to be impleaded as legal representative alongwith the plaintiffs for the purpose of deciding that suit, however the learned Sub Judge of one or two places inadvertently used the words legal-heir instead of legal representative. To clear the ambiguity, the plaintiffs filed a Revision petition in the Hon'ble High Court, Chandigarh, wherein it was held that the use of word 'legal heir' would not be of any help to any party and in fact, the learned trial Court had decided the legal representative only. Kamlesh Rani defendant No.3 filed suit No.866 of 22.11.2001 decided on 21.09.2002 for declaration in respect of 1/3 share 'in the estate of Bant Singh deceased and the rest 2/3 share being of the plaintiffs against the defendants No.1 and 2 and further impleading the plaintiffs as proforma defendants. The defendants no.1 and 2

were in jail and thus proceeded against ex-parte and the present plaintiffs were deleted from the array of defendants and Kamlesh Rani succeeded in obtaining ex parte judgment and decree. The Judgment and decree stated above was obtained fraudulently, dishonestly, and in fact the judgment and decree is of no consequence and does, not determine her rights qua the plaintiffs. Karevanama was executed before filing of divorce petition under section 13 of Hindu marriage Act, 1955 against her first husband' Mool Chand, therefore, the defendant no.3 Kamlesh Rani cannot be legally treated to the widow of Bant Singh and the alleged marriage in Kareva form is void in the eyes of law for all intents and purposes. The defendant no.3 proclaimed herself to be the widow of Bant Singh and owner of 1/3 share in the estate of Bant Singh, entitled to Joint possession etc. on the basis of Judgment and decree passed by Shri M.D.S. Dhillon, the then Civil Judge (Jr. Divn.), Dhuri. Now the defendant no. 3 is trying to create charge over the suit property, detailed in the heading of the plaint and in case, she succeeds in doing so, an irreparable loss would be caused to the plaintiff. Defendant no.3 has been requested number of times to claim herself to be the co-owner to the extent of 1/3 share and also not to interfere in the possession of the plaintiffs over the suit property but to no effect. Hence this suit.

4. Upon notice, defendants No.1 and 2 appeared and filed their joint written statement. Defendants No.1 and 2 admitted the claim of the plaintiffs and prayed for disposal of the suit accordingly.

5. Defendant no.3 filed her separate written. statement raising

preliminary objections of suit barred by principles of Res-judicata, barred by law of limitation and false suit. It has been averred that defendant No.3 Kamlesh Rani filed a suit No.866 of 22.11.2001 which was decided on 21.09.2002 by the Court in favour of answering defendant and the plaintiffs and against the defendants No.1 and 2. Neither the plaintiffs nor defendants No.1 and 2' filed any appeal against' the decree and judgment dated 21.09.2002. As such, the decree and Judgment dated 21.09.2002 has become final. The suit- land in suit No.866 and in the present suit is the same. The parties of the present suit as well as suit No.866 dated 22.11.2001 decided on 21.09.2002 also the same. As such, the present suit is barred by the Principle of Res-judicata. The suit No. 866 dated 22.11.2001 was decided, on 21.09.2002 and no appeal was filed by any of the parties to the suit. The plaintiffs being parties to the suit No.866 were also within the knowledge of decree and judgment dated 21.09.2002 passed by the Court in favour of answering defendant and against the plaintiffs and defendants no.1 and 2. As such present suit is also barred by law of limitation. Plaintiffs are not in possession of any part of the suit land, therefore, the plaintiffs have no legal right to file the present suit only for declaration and injunction. On merits, all the material averments were denied and it has been averred that Gobinder Singh, Kuldeep Singh filed civil suit against Bant Singh which was dismissed: Bant Singh left his house and remained un-traced. Bant Singh remained in his house with his wife Kamlesh Rani. During the pendency of the suit Bant Singh died. The plaintiffs and answering defendant were impleaded as legal representative of Bant Singh being

daughters and widow. However, suit No.267 of 17.04.1999 decided on 31.10.2000 was dismissed under order 9 rule 3 of the CPC. The Karevanama was registered and legal and valid document executed between Bant Singh and the answering defendant. The Court in suit No.866 dated 22.11.2001 decided on 21.09.2002 and in order dated 17.11.2002 clearly held that Kamlesh Rani defendant No.3 is the widow of Bant Singh deceased. Bant Singh was murdered and case was registered under sections 302, 201, 506, 364, 120-B, 148, 149 of the IPC against Kuldeep Singh, Paramjit Kaur, Gobinder Singh and Ranjit Kaur plaintiff No.1 and against four other persons on the statement of Kamlesh Rani defendant No.3. Registered Karevanama dated 08.06.1993 was executed between Bant Singh and defendant No.3 after obtaining the divorce from Mool Chand from the Court of learned ADJ, Sangrur on 27.07.1993. Kamlesh Rani defendant No.3 is the widow of Bant Singh deceased. Defendants No.1 and 2 were convicted for the murder of their father. Kuldeep Singh and Gobinder Singh were disqualified from inheriting the property of their father being murderers. Kamlesh Rani defendant No.3 filed a suit no.866 of 22.11.2001 decided on 21.09.2002 for declaration in respect of 1337/2210 share in the land measuring 165 kanals 10 marlas and 1/3 share in land measuring 6 kanals 12 marlas. Suit was decreed in favour of defendant No.3 vide judgment and decree dated 21.09.2002. Rest of the averments were denied and finally a prayer to dismiss the suit has been made.

6. In the replications filed by the plaintiff, the averments of the plaint were reiterated and those of the written statements were

controverted.

7. From the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are entitled to the relief of declaration that the Judgment and Decree dated 21.9.2002 passed in civil suit no. 866 of 22. 11.2001 is illegal, null and void or the same obtained by fraud and misrepresentation? OPP

2. Whether the plaintiffs are entitled to the relief of declaration that they are co-owners in joint possession of the suit property in equal shares? OPP

3. Whether the plaintiffs are entitled to the relief of permanent injunction, as prayed for? OPP .

4. Whether the defendant no.3 is the legally wedded wife of late Bant Singh? OPD

4(a). Whether the suit is barred by limitation? OPD(3)

4(b). Whether the suit of the plaintiffs is barred by principles of res-judicata? OPD(3) .

5. Relief. .

8. Since death of deceased Bant Singh was not denied and plaintiffs and defendants No.1 and 2 were also admitted to be the legal-heir of deceased Bant Singh by the defendant No.3, therefore, she was directed to lead her evidence to prove on record her plea that she was legally wedded wife and widow of deceased Bant Singh as the decision of this issue No.4 would have decided the fate of the suit itself.

9. The parties have led their respective evidence on the aforesaid issues. After appraisal of the same, the trial Court vide judgment and decree dated 21.1.2012 decreed the suit of the plaintiffs with costs .

10. Feeling dissatisfied with the aforesaid judgment and decree

dated 21.1.2012, the defendant-appellant has directed the First Appeal, which was dismissed by learned Additional District Judge, Sangrur vide judgment and decree dated 11.09.2014 after re-appraisal of the evidence.

11. Still feeling dissatisfied with the judgment and decree dated 21.1.2012 and judgment and decree dated 11.09.2014, the present regular second appeal has been directed.

12. The defendant-appellant in paragraph No.09 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (A) Whether the judgment and decree dated 21.01.2012 passed by Trial Court and judgment and decree dated 11.09.2014 passed by the First Appellate Court are illegal, null and void and deserves to be set aside, in the interest of justice ?
- B) Whether the Courts below erred in setting-aside the decree dated 21.09.2002 passed in the suit No.866 of 22.11.2001 whereby it was declared that applicant is entitled to her share in land measuring 6 kanals 12 marlas ?
- C) Whether the respondent No.1 and 2 had right to challenge the decree dated 21.09.2002 beyond the period of limitation as the limitation for challenging the decree dated 21.09.2002 was upto 21.09.2005 i.e., three years, but the suit was filed by the respondent No.1 and 2 only on 13.05.2008 which was time barred ?
- D) Whether once there was already decree dated 21.09.2002 in favour of the appellant to the extent of 1/3rd share in the property of deceased Bant Singh and once no appeal was filed against such decree dated 21.09.2002 and thereafter the District Collector had also passed the order dated 13.08.2010 regarding mutation No.11509 of village Kanjla in favour of the appellant in File No.11/Mut/DC/10 of 24.02.2010, the appellant is entitled to such 1/3rd share to the exclusion of all others?

E) Whether the appellant is entitled to the relief of recovery as sought for by him?

13. I have heard learned counsel for the appellant and have gone through the case file.

14. The controversy in the present appeal resolved around a decree dated 21.09.2002 stated to be passed in favour of defendants. It is not disputed during the course of arguments that inheritance of Bant Singh is in dispute. It is also not disputed during the course of arguments that Kuldeep Singh and Gobinder Singh sons of Bant Singh have been convicted for murder of Bant Singh and they are debarred from claiming the inheritance of Bant Singh. The claim of the defendants/appellants is in respect of decree dated 21.09.2002. During the course of arguments, counsel for the appellant has placed on record copy of judgment and decree dated 21.09.2002 passed by Shri M.D.S.Dhillon, Civil Judge (Junior Division), Dhuri. From the perusal of the said decree, it is revealed that present plaintiffs were arrayed as proforma defendants and suit against them was dismissed as withdrawn. The decree of declaration was passed against Kuldeep Singh and Gobinder Singh alone. The effected parties in the present case are the present plaintiffs and previous suit against them has already been dismissed as withdrawn. The defendants have the opportunity to contest the suit against the present defendants as according to inheritance of Bant Singh there are four heirs namely Ranjit Kaur and Satnam Kaur plaintiffs and Kuldeep Singh and Gobinder Singh defendants. Kuldeep Singh and Gobinder Singh are debarred from claiming inheritance in view of Section 5 of Hindu Succession Act. It has also come on the record that

defendant No.3 has claimed herself to be the widow of Bant Singh but there is a concurrent finding recorded by both the Courts below that during the subsistence of marriage with another person, no legal marriage could be performed by the defendant/appellants. Even during the course of arguments the defendants have not addressed any arguments on this point. So, in these circumstances, I have no hesitation that no question of law much-less the substantial question of law has arisen in the present appeal.

15. The factual position regarding decree cannot be re-agitated in regular second appeal. Only that decree bind the party which is obtained inter se between the parties. The defendant/appellant has earlier arrayed Ranjit Kaur and Satnam Kaur as party but for the reasons best known to her she has withdrawn the earlier suit titled as **Kamlesh Rani vs. Kuldeep Singh and others** decided on 21.09.2002 against them. The decree dated 21.09.2002 cannot operate as res judicata against plaintiffs/respondents. There is no period of limitation for filing the suit on the basis of inheritance.

16. In view of the above discussion, the appeal preferred by the defendant/appellant is without any merit and the same stands dismissed.

17. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

April 07 , 2015
sv