

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 1886 of 2014 (O&M)
Date of decision:- 04.08.2015

Vishal Yadav

...Appellants

Versus

Bir Singh and others

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sanjay Mittal, Advocate
for the appellant

RITU BAHRI J.

This regular second appeal is directed against the concurrent finding of facts, recorded by both the Courts below whereby the suit of the plaintiff-appellant (to be referred as 'the appellant') has been dismissed.

The case of the appellant before the Court below is that he is co-owner in joint possession of agricultural land measuring 73 kanals 7 marla to the extent of $\frac{1}{4}$ share. The appellant had purchased the aforesaid land from funds of savings of his father and has become co-owner in joint possession of the aforesaid land with the respondents vide sale deed dated 18.08.1980. The mutation deed dated 16.06.1985 has also been sanctioned in favour of the appellant. Respondent No. 1 in collusion with respondent Nos. 2 to 5 had obtained the false and frivolous collusive decree dated 26.03.1994. At the time of consent decree,

the appellant was of unsound mind and mentally distrubed. He has come to know about the said judgment and decree dated 16.03.1994 in the month of May, 2006 and he enquired the revenue record when respondent No. 1 had tried to interfere in the peaceful possession of the appellant and threatened the appellant to alienate the suit land.

On notice, respondent Nos. 2 to 5 did not appear in the Court and were proceeded ex parte. Respondent No. 1 had appeared and filed its written statement and on merits averred that appellant is neither the owner nor in possession of the suit property. The suit land is owned and possessed by respondent No. 1. The appellant did not purchase the suit land from the savings of his father rather it is respondent No. 1 who had purchased the suit land on 18.08.1980 in his own name and in the name of his two brothers Bishamber and Braham Dutt and in the name of the appellant. The judgment and decree dated 26.03.1994 is valid. The appellant was not of unsound mind during the period between 1993 to 1995 and no fraud was played upon him. Rather the family settlement had taken place between the parties and thus, the impugned judgment and decree was passed in favour of respondent No. 1.

Both the Courts below dismissed the suit of the appellant on various grounds, which reads as under:-

Firstly, the appellant submits that he was of unsound mind but from the perusal of the evidence produced by both the parties, the appellant was mentally fit at the time of passing of judgment and decree dated 26.03.1994. As per statement of P.W.1 Dr. Sudhir Kumar Khandelwal, the appellant was suffering from some mental disorder but he was not of unsound mind and the mental disorder was because of the excessive use of medicines. Further, the appellant himself had admitted that he had passed matriculation in the year 1992. The appellant got recovered in the year 1996. Ex D21 is the power of attorney executed by one Bharat Singh Yadav in favour of the appellant on 16.06.1992 meaning thereby in the year 1992, the appellant was mentally fit. A civil suit titled Vishal and others vs. Birham Dutt and other was filed by the appellant, which was decreed in favour of the appellant and other vide judgment and decree dated 13.06.2001, whereby the joint property was distributed. This decree was never challenged by the appellant till date. Further the appellant got marriage and had two children and after marriage he purchase a scorpio car and was involved in transport business and thus he was mentally fit, at the time of passing of decree dated 26.03.1994. No cogent evidence was produced by the appellant to prove the fact that he was of unsound mind.

Even the mother of the appellant did not appear in the witness box to substantiate this fact.

Secondly, as per the appellant, the judgment and decree dated 26.03.1994 was not registered, has no evidentiary value in the eyes of law as the right was not created for the first time in favour of respondent No. 1 by virtue of judgment and decree dated 26.03.1994. The right in favour of respondent No. 1 had already been created in an oral family settlement which took place in the month of January 1994.

The suit of the appellant was held to be time barred, as the appellant had got recovered from his disease in the year 1996 and he kept mum till 2006 and thus, the present suit was filed after a gap of 12 years

Thus, it was fully proved that the appellant was mentally fit when the judgment and decree dated 26.03.1994 was passed and he had suffered the judgment and decree dated 26.03.1994 out of his free will and in lieu of family settlement which had arrive at amongst the parties. No fraud or misrepresentation had been played by respondent No. 1 upon the appellant.

After going through the detailed judgments passed by both the Courts below, it does not suffer from any misreading of facts. No substantial question of law arises for

adjudication by this Court.

Accordingly, regular second appeal is dismissed.

04.08.2015

G Arora

(RITU BAHRI)
JUDGE