

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 2186 of 2014 (O&M)
Date of decision:- 28.04.2015

Palu Singh & others

...Appellants

Versus

Tota Singh & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. A.S. Barnala, Advocate
for the appellants.

RITU BAHRI J.

C.M. No. 5315-C of 2014

For the reasons mentioned in the application, delay of 98 days in re-filing the present revision petition is condoned.

The application stands disposed of accordingly.

R.S.A No. 2186 of 2014

The present regular second appeal is directed against the concurrent finding of facts recorded by both the Courts below whereby the suit of the plaintiffs-appellants (for short 'appellants') was dismissed.

Appellants are claiming themselves to be the real sons of Karam Singh and thus, filed a suit against the defendants/respondents (for short 'respondents') on the averments that Karam Singh was owner of the property in dispute. Respondent No. 1 Tota Singh is their brother. Karam

Singh died and after death, appellants along with respondent No. 1 inherited the land in dispute in equal shares. In April 2005, appellants harvested crop to the extent of 4/5 share and then respondent No. 1 took forcible possession of the same. The appellants came to know after seeing the revenue record that respondent No. 1 obtained consent decree in his favour from Karam Singh on 10.04.1985 and then alienated the land in favour of respondent No. 2, who further mortgaged this land in favour of respondent No. 3-Bank and obtained loan. Therefore, decree dated 10.04.1985 and sale deed No. 1265 dated 16.08.2000, No. 1299 dated 28.08.2000 and No. 1300 dated 28.08.2000 and No. 1310 dated 28.02.2000 and further the mutation entered on their basis are null, void and are having no effect upon the rights of the appellants because the property in dispute was Joint Hindu Family. The trial Court after going through the entire evidence, dismissed the suit filed by the appellants on the following grounds:-

1. Decree dated 10.04.1985 passed in Civil Suit No. 178 dated 25.03.1985 was suffered by Karam Singh and respondent No. 1 became the owner of the land in dispute. The decree is not being sought to be set aside on the ground of fraud. The decree did not require registration as it was on the basis of family settlement.

2. On the basis of consent decree, the mutation was

sanctioned vide mutation No. 9518 dated 19.10.1985 (Ex P4) under the signatures of AC IInd Grade Barnala. It has been specifically recited that Gurdev Singh Numberdar along with Tota Singh produced the said decree in the presence of other parties. Thereafter, the mutation was sanctioned. While sanctioning the mutation No. 1922 (Ex P5), the presence of Tota Singh and Jaggar Singh, Bagh Singh, Paalu and others has been mentioned by A.C IInd Grade Barnala on 19.06.1989. In his cross examination, Paalu has admitted that Ex P5 was sanctioned in his presence. Hence, he was very much aware about the consent decree and has been admitted by him, since 1989.

3. The suit was filed in September, 2005 after a gap of almost 16 years. After passing of the consent decree, appellant No.1 himself sold some land of his share in the land adjacent to the land in dispute vide sale deed Ex D15 and Ex D16 in favour of the respondents. The suit was held to be hopelessly time barred.

4. Since the property in dispute had been partitioned by way of family settlement as per consent decree, it did not require any registration as held by Hon'ble the Supreme Court in cases of ***Sahu Madho Das v. Mukand Ram AIR 1955 SC 481 and Ram Charan Dass v. Giri Nandinni Devi AIR 1966 SC 323.***

On appeal, the Lower Appellate Court affirmed the

findings of the trial Court and dismissed the appeal.

The judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, appeal is dismissed.

April 28, 2015
G Arora

(RITU BAHRI)
JUDGE