

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

RSA No. 2455 of 2014 (O&M)

Date of decision : 17.3.2015

Harpreet Kaur

..... Appellant

VS

Jugraj Singh and others

..... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Sukhdip Singh Brar, Advocate, for the appellant.

Rajesh Bindal J.

The plaintiff having failed in both the Courts below has filed the present second appeal. She filed a suit claiming 1/7th share in the property detailed therein. Further challenge was made to decree dated 16.3.1981 in a suit titled as *Rabinder Singh vs Manjit Kaur* to be illegal. Challenge was also made to the sale-deeds dated 14.10.1996 and 17.10.1996.

The dispute pertains to the property of deceased Umrao Singh, father of the plaintiff-appellant, who expired on 17.12.1967. He was survived by two sons namely Rabinder Singh, Jagdeep Singh and four daughters namely Manjit Kaur, Harpreet Kaur (Plaintiff-appellant), Taninder Kaur and Parminder Kaur and widow Iqbal Kaur. While filing the suit, the plaintiff-appellant claimed that after the death of her father Umrao Singh, the property was mutated in the name of all the legal heirs to the extent of 1/7th share each. Forcible possession was taken from the appellant by her two brothers on the basis of a decree dated 16.3.1981, which was allegedly suffered by her. The said decree has been taken by fraud as the appellant neither filed written statement nor made any statement in the Court. As part of the property was sold even the sale-deeds were also challenged.

The plea raised by the defendants was that the suit was not maintainable as such as the appellant had earlier filed a suit for the same relief regarding the same property, which was dismissed on 12.4.1994. Even a subsequent suit filed by her was dismissed under Order IX Rule 3 CPC on 20.11.2002. The suit in question was not only hopelessly time barred but was bad even on account of mis-joinder and non-joinder of necessary parties. The earlier suit where the appellant was a defendant, she had filed written statement and voluntarily admitted the claim of Rabinder Singh, hence, the decree cannot be permitted to be challenged on account of fraud, etc.

Both the Courts below did not find any merit in the submissions made by learned counsel for the appellant/plaintiff, and dismissed the suit.

Assailing the findings recorded by both the courts below, learned counsel for the appellant submitted that once she had not filed written statement and suffered any statement relinquishing her right in the property left by her late father Umrao Singh, the decree obtained by defendant no. 1 – Rabinder Singh was result of a fraud. Hence, the same deserves to be set aside and subsequent sale of the property made by him.

After hearing learned counsel for the appellant, I do not find any reason to interfere with the concurrent findings of fact recorded by both the courts below. It is a case in which the appellant/plaintiff did not even appear in the witness box to get her statement recorded especially to the extent that in the earlier suit she never filed written statement admitting the claim of the plaintiff therein and also that she had not suffered statement to that extent in Court. Adverse inference was taken against her on that account. Though the plea of fraud was taken by the appellant that her signatures on the written statement and other documents in the decree under challenge were forged, however, no evidence was led in support thereof. Further the respondents/defendants in the suit had proved that appellant had earlier filed Civil Suit No. 390 of 1992. A specific issue was framed as to whether there was any decree suffered by the plaintiff therein on 16.3.1981

i.e. the present appellant. In the aforesaid suit the Court opined that the appellant had voluntarily suffered the decree on 16.3.1981, hence, a fresh suit for the same relief was not maintainable. It was further opined that from filing of the civil suit in the year 1991 where earlier decree dated 16.3.1981 was challenged, it was clearly established that the appellant was in the knowledge of that decree, which was upheld by judgment dated 12.4.1994. Hence, the present suit filed on 25.4.2003 challenging the same decree was highly belated.

In view of the aforesaid material on record from where it has been established beyond doubt that the appellant had earlier failed in a suit filed by her challenging the same decree, she cannot be permitted to raise the issue time and again. No substantial question of law arises. The appeal is accordingly dismissed.

As far as the applications for condonation of delay in filing and refiling of the appeal are concerned, though it is claimed that counsel initially engaged and who filed the appeal expired on account of which delay occurred, hence, deserves to be condoned, however, considering the fact that there is no merit in the present appeal, even the applications for condonation of delay in filing and refiling are also dismissed.

17.3.2015
vs.

(Rajesh Bindal)
Judge