

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.599 of 2015 (O&M)
Date of Decision: June 29, 2015

Balwant Singh

...Appellant

Versus

Umed Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Pankaj Maini, Advocate
for the appellant.

INDERJIT SINGH, J.

Appellant-plaintiff Balwant Singh has filed this regular second appeal against Umed Singh and Wazir Singh respondents-defendants challenging the impugned judgment and decree dated 26.08.2011 passed by learned Civil Judge (Junior Division) Hansi vide which the suit filed by the plaintiff-appellant for declaration and injunction was dismissed and also the judgment and decree dated 06.12.2014 passed by learned Addl. District Judge, Hisar vide which the appeal filed by the appellant was dismissed.

The brief facts of the case are that plaintiff-appellant Balwant Singh filed a suit against Umed Singh and Wazir Singh defendants-respondents for declaration and injunction on the grounds that he is in possession of 77 kanals 15 marlas being 5/18 share of the total land and the judgment and decree dated 07.11.1981 passed

by the then Sub Judge, Hansi in Civil Suit No.1148-C titled as 'Umed Singh vs. Balwant Singh' and mutation No.1251 sanctioned on 21.07.1983 are null and void based upon fraud and misrepresentation.

The main case of the plaintiff is that in the month of June 2007, plaintiff received summons of partition application filed by Rajesh Kumar in the Court of Assistant Collector IInd Grade, Hansi, in which plaintiff was shown in possession of 1/6th share of the land in dispute and when the plaintiff enquired about it from the defendants, he came to know that in the year 1981 the defendants got passed a civil court decree dated 07.11.1981 from the then Sub Judge, Hansi in civil suit titled as 'Umed Singh vs. Balwant Singh', which is illegal. It is also the case of the plaintiff that defendants asked the plaintiff that they are getting partitioned their land regarding which the signatures of the plaintiff were obtained in the Court but the plaintiff never signed any document or paper for getting transferred his share and the judgment and decree is based upon fraud and misrepresentation and liable to set aside. It is further the case of the plaintiff that he never engaged any counsel nor signed any document or statement for transferring his share.

Both the parties led evidence. Learned Civil Judge (Junior Division) Hansi, on the basis of the evidence, dismissed the suit filed by the plaintiff vide judgment and decree dated 26.08.2011. Appellant-plaintiff filed an appeal before learned District Judge, Hisar and learned Addl. District Judge, Hisar also dismissed the appeal vide judgment and decree dated 06.12.2014.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellant-plaintiff.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that the decree has been passed in the year 1981 in a civil suit titled as 'Umed Singh vs. Balwant Singh' and the mutation regarding the same, has been sanctioned on 21.07.1983. The plaintiff-appellant has filed the suit on 17.10.2007 i.e. after about 24 years of passing of the decree by the Civil Court. The perusal of the pleadings in the plaint also shows that appellant is indirectly admitting his signatures on the statement recorded before the Civil Judge. He has nowhere denied that he never appeared before the Court or has not made any statement. Rather, in the plaint, the plaintiff states that defendants asked the plaintiff in the year 1981 regarding partitioning of their land in which the signatures are required and plaintiff signed various papers while coming to the Court, which means that plaintiff indirectly admitting his signatures in the Court proceedings. The only case of the plaintiff-appellant is that he has not signed any document or paper for getting transferred of his share and judgment and decree is based upon fraud and misrepresentation. The plea of fraud taken by the plaintiff, is to be proved by him but there is no cogent evidence on record to prove the plea of fraud and misrepresentation. Both the parties examined the expert and the Courts, after considering the reports, have examined the signatures itself and reached to the conclusion that the signatures are of the

plaintiff. Furthermore, the defendants examined DW-3 Dhoop Singh, retired Tehsildar, who proved the document Ex.P12 and P14, which are having signatures of Balwant Singh in a numberdari case, in which 48 kanals 19 marlas of land has been shown as owned by the plaintiff in the year 1997. Therefore, the Court has correctly held that the version of the plaintiff that he came to know regarding the decree in year 2007, cannot be believed. DW-2 Sultan Singh has also appeared and proved the Vakalatnama and written statement etc. Defendant Umed Singh also appeared as a witness.

Keeping in view the evidence on record, I find that the findings given by the Courts below are correct, as per law. The suit of the plaintiff is clearly time barred also. The findings of the Courts below are concurrent, as per evidence and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

June 29, 2015
Vgulati

(INDERJIT SINGH)
JUDGE