

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.79 of 2015 (O&M)

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Date of decision:15.7.2015

Raghubir Singh and others

.....Appellants

v.

Gurnam Singh and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Pawan Kumar Sharma, Advocate for the appellants.

Dr. Surinder Singh Joshi, Advocate for caveator/respondent
No.9.

.....

Inderjit Singh, J.

This regular second appeal has been filed by Raghubir Singh and others-appellants/defendants against Gurnam Singh and others-respondents/plaintiffs challenging the impugned judgment and decree dated 11.11.2014 passed by the learned Additional District Judge, S.A.S. Nagar (Mohali), vide which the appeal filed by the appellants-defendants against the impugned judgment and decree dated 1.12.2011 passed by Additional Civil Judge (Senior Division), Dera Bassi, decreeing the suits of the plaintiffs, has been dismissed.

The brief facts of the case are that Gurnam Singh and other plaintiffs filed the suit against Tarlok Singh along with his sons-defendants

for declaration for setting aside the judgment and decree passed by learned Sub Judge 2nd Class, Rajpura, in Civil Suit No.346 of 1994, decided on 12.10.1994, titled as “Rattan Singh and others Versus Tarlok Singh” being fraudulent, null and void, contrary to law, arbitrary and fraud is practiced by both the parties in the suit in Court, as the property/suit land is ‘Abadi Deh’ land of Village Devi Nagar, Tehsil Dera Bassi, District Patiala, (now Distt. S.A.S. Nagar, Mohali) and for permanent injunction restraining the defendants from alienating or, in any other manner, transferring the same, cutting the trees, raising the construction etc.

The brief facts of the case of the plaintiffs are that they being the residents of Village Devi Nagar and right holders and being interested in common property of village community and having interest in the ‘Abadi Deh’ land and to safeguard the interest of the inhabitants of village community in the ‘Abadi Deh’ land had filed the suit. The judgment and decree passed on 12.10.1994 by the then Sub Judge 2nd Class, Rajpura, in civil suit titled as “Rattan Singh and others Versus Tarlok Singh and others” had been obtained by the parties to the said suit by playing fraud on Court and is liable to be set aside being fraudulent, null and void, contrary to law, arbitrary. This fact came to the knowledge of the plaintiffs regarding the collusive decree, when these were produced by the defendants in a proceedings under Section 145 Cr.P.C. on the application dated 13.11.1998, moved by inhabitants of village and those proceedings were disposed of on 4.5.2001 by the Court of Sub Divisional Magistrate, Dera Bassi. As per the case of the plaintiffs, consolidation operation took place in the village and a

draft scheme was prepared and at Serial No.10 Abadi Deh land was earmarked and total land measuring 254 Bighas 6 Biswas was earmarked as 'Aadi Deh' land and most of the part of that land is lying vacant and uninhabited. The scheme stipulates at present that there is no demand of the owner and non-owners, as such the land insider and outsider of the circular road i.e. on eastern and western side of the brick paved street leading to Harizan Basti from link road connected with Jawaharpur way was earmarked as 52 Bighas being inhabited 'Abadi Deh' and remaining 202 Bighas 16 Biswas was kept and earmarked as uninhabited 'Abadi Deh' land and was reserved for common purposes like income of Village Panchayat and for grazing cattle etc. Since 1993, the inhabitants of village are agitating before various authorities/Courts regarding encroaching upon this 'Abadi Deh' land and also selling this land to some industrial persons and for that purpose they must be restrained from doing so. CWP No.5348 of 1997 titled as "Balwant Singh and others Versus Deputy Commissioner, Patiala and others" was filed in the High Court to protect the rights of the owners/inhabitants of the village and not to allow some individuals to misappropriate the public property, which was disposed of on 27.5.1997. The High Court was pleased to direct the Director Consolidation, Punjab to look into the matter which was referred to Deputy Commissioner, Patiala and to pass appropriate order. After giving opportunity of hearing to both the parties, the Director Consolidation of Holdings, Punjab, gave a finding to the effect that the large chunk of 254 Bighas 16 Biswas, although recorded as 'Abadi Deh' land, is being misused by various residents of the

village and those unauthorized occupants must be evicted from that land by the Deputy Commissioner by taking appropriate remedy. Again, the inhabitants of the village filed CWP No.13030 of 1997 and in that writ petition, the High Court was pleased to direct the Deputy Commissioner, Patiala to take recourse against the unauthorized occupants and the matter was directed and relegated to the Deputy Commissioner, Patiala, to file eviction proceedings against the unauthorized occupants within one month from the date of passing of the order. The defendants have deliberately and intentionally concealed the collusive decree in the legal proceedings pending before various authorities including the High Court.

Tarlok Singh-defendant No.1 in fact remained Sarpanch of Village Devi Nagar from 1978 to 1983 and he knew that the large 'Abadi Deh' land is lying vacant, with his mala fide intention and in a deceptive manner showed possession thereof from back date and obtained collusive decrees. Those decrees are not good decrees in the eyes of law.

On the other hand, the case of the defendants is that the plaintiffs have admitted that the suit property including the other land of 'Abadi Deh' is joint of the parties to the suit and villagers and the efficacious remedy is available with the plaintiffs to get the total land partitioned through competent Court. It is also stated that the decree passed by the Sub Judge 2nd Class, Rajpura, is a valid decree and it is not liable to be set aside. It is admitted that defendant No.5 Hari Singh remained Sarpanch from 1978 to 1983. It is stated that the defendants had planted trees in the suit property and have affixed barbed wire around the same.

The learned Additional Civil Judge (Senior Division), Dera Bassi, after framing of the issues and the parties led the evidence, decreed the suit of the plaintiffs. Aggrieved from this, the defendants filed the appeal, which was also dismissed by judgment and decree dated 11.11.2014 by the learned Additional District Judge, S.A.S. Nagar (Mohali).

At the time of arguments, learned counsel for the appellants argued that the judgment passed by Sub Judge 2nd Class, Rajpura, on 12.10.1994 is a valid decree and has been passed as per law and is not liable to be set aside. The suit of the plaintiffs is liable to be dismissed. He also argued that findings given by the Courts below are not as per evidence and law.

I have heard learned counsel for the appellants and learned counsel for the caveator/respondent No.9 and have gone through the record.

From the record, I find that the defendants have not produced any evidence on record to show that the property in question, which was subject matter of the Civil Suit No.346 of 1994, decided on 12.10.1994, titled as “Rattan Singh and others Versus Tarlok Singh”, was owned by Tarlok Singh. It is not disputed that the property, which was subject matter of that suit, was part of the ‘Abadi Deh’ land of the village, which is lying vacant. It is no where the case of the defendants that it is their ancestral property or it has come to them through their ancestors. As per the evidence, which is discussed by learned Additional Civil Judge (Senior Division), Dera Bassi, only site plan has been filed in that consent decree. The fact regarding Khasra numbers or the fact that the property is managed

by the Gram Panchayat or owned by the proprietors of the village has not been brought to the notice of the Court and the material facts have been concealed by the defendants while obtaining the consent decree from Sub Judge 2nd Class, Rajpura. As Tarlok Singh was not the owner of the property and he was in unauthorized possession by taking the benefit of being Sarpanch from the year 1978 to 1983, he cannot pass the better title to Rattan Singh etc. his sons. As it is proved on the record that they are not the exclusive owners of the property in dispute, which was subject matter of the civil decree dated 12.10.1994, therefore, they cannot pass the better title and that decree is liable to be set aside. The decree dated 12.10.1994 will not pass any title in favour of Rattan Singh and others.

From the record, I find that nothing has been shown whether Tarlok Singh has any share in 'Abadi Deh' area which is lying vacant as per order of the Director Consolidation. There is nothing on the record nor any cogent document that, in any way, this portion of the property, which is in dispute was ever given to Tarlok Singh as owner by the Gram Panchayat, Consolidation authorities or any revenue authorities. Therefore, the findings given by the Courts below are correct as per evidence and law and same are concurrent. Nothing has been pointed out as to which evidence has been misread by the Courts below and which evidence has not been discussed in right perspective. The findings cannot be held as perverse. Both the judgments and decrees passed by the Courts below are correct, as per evidence and law which do not require any interference from this Court and the same are upheld. No substantial question of law arises in this regular

second appeal.

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

July 15, 2015.

(Inderjit Singh)
Judge

hsp