

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

**RSA No.704 of 2014 (O&M)
Date of decision: 30th January, 2015**

Sardul Singh

... Appellant

Vs.

Ram Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Bharat Bir Singh Sobti, Advocate
for the appellant.

AMIT RAWAL J.

C.M.No.1609-C-2014

The application is allowed, subject to all just exceptions.

C.M.No1610-C-2014

The application is allowed, subject to all just exception.

Documents as Annexures P-1 to P-3 are taken on record.

RSA No.704 of 2014 (O&M)

This regular second appeal is directed at the instance of appellant-plaintiff against the judgments and decrees of both the Courts below whereby the suit of appellant-plaintiff claiming declaration to the effect that the judgment and decree dated 31.03.1992 passed in Civil Suit No.25 of 10.01.1991 alleged to have suffered by the appellant-plaintiff in favour of defendants No.1 and 2 (defendant No.6 in the said suit) regarding his 1/36th share of the land

measuring 382 kanals 9 marlas (hereinafter referred to 'suit property') was illegal, null, void and arbitrary and not binding upon the rights of the appellant-plaintiff and thus was liable to be set aside as alleged to have been obtained by way of impersonation of joint possession as well as decree of permanent injunction restraining defendants No.1 and 2 from alienating any portion of the suit property, was dismissed by the trial Court and appeal filed against the same was also dismissed by the lower Appellate Court.

Mr. B.B.S.Sobti, learned counsel appearing on behalf of the appellant-plaintiff has submitted that plaintiff along with his sisters defendants No.6 and 7 and defendants No.3 to 5 were co-shares in joint possession of the suit property and in the month of April 2009, when appellant-plaintiff requested defendants No.1 and 2 to vacate the suit property and hand over its possession to him as well as to the defendants No.6 and 7, as they wanted to give the same on lease to some other person, who offered good price, but they refused and claimed to have become owners of the suit property on the basis of judgment and decree dated 31.03.1992. After making enquiries, ascertained, that mutation No.5912 had also been sanctioned in favour of defendants No.1 and 2. It transpired that appellant/plaintiff and defendants No.6 and 7 did not have the knowledge of the pendency of the said suit nor received any summons either through ordinary post or registered A.D. much less engaged Sh. Sukhdarshan Singh, Advocate as counsel to contest the Civil Suit

No.25 of 1991, neither they appeared in the aforementioned proceedings as well as entered into compromise Ex.CX. Mr. Sobti, also submitted that no family settlement had taken place.

According to him, defendants in the written statement had taken a vague plea of bonafide owners in possession of the suit property on the basis of the decree as the plaintiff along with defendants No.6 and 7 left their share in the suit property for consideration of ₹20,000/-which was received from the father of defendants and thus, decree was not legitimate much less bonafide. He further submitted that the defendants took the plea of adverse possession as well. He also submitted that the trial Court has committed illegality much less perversity while dismissing the suit on the following grounds:-

- i) misread the oral and documentary evidence. There was no pre-existing right and there was no compliance of Section 54 of the Transfer of Property Act.*
- ii) the lower Appellate Court did not discharge the obligation as under Section 76 of the CPC.*

He further submitted that the Courts below have misread the report of the handwriting expert dated 15.03.2011 (Annexure P-3), in essence there was misreading of the report of the handwriting expert and therefore, the impugned judgments and decrees of the Courts below are liable to be set aside. The hand writing expert has categorically stated that the thumb impressions of Sardul Singh-

plaintiff/appellant did not tally with written statement dated 13.03.1992, vakalatnama dated 13.03.1992 filed in the proceedings titled as Ram Singh and another vs. Smt. Baljit Kaur and others i.e. Civil Suit No.25 of 1991 decided on 31.03.1992.

I have heard learned counsel for the appellant and perused the impugned judgments and decrees of the Courts below.

The argument of Mr. Sobti, Advocate sans merit. As from the perusal of the report of the hand writing expert, it has come on record that thumb impressions of Sardul Singh, marked S1 to S9 were of the right hand whereas thumb impressions from Q1 to Q4 were of the left hand and therefore, appellant-plaintiff intentionally put thumb impressions of his right hand instead of left hand. No explanation much less cogent explanation has been given in the suit or in the evidence as to how and in what manner the appellant-plaintiff acquired the knowledge of the decree but by taking a bald averment in the plaint i.e. when the appellant-plaintiff in the month of April, 2009, requested defendants to vacate the premises and when they refused to vacate the same, acquired the knowledge of the decree dated 31.3.1992 covered up the delay whereas no sane person would sit idle, where the collusive decree has been obtained by way of misrepresentation or fraud. The appellant-plaintiff also could not produce any record in support of the averments made in the plaint that defendants were given the land on lease basis. The operative part of the report of hand writing expert is extracted herein

below:-

“The examination of the disputed thumb impressions mark Q1 to Q4 reveals that their apex ridges are sliding to left down side confirming that all these thumb impressions are of left hand. These are identical in their interse comparison.

The examination of the standard thumb impressions mark S1 to S9 reveals that their apex ridges are sliding to right down side confirming that all these thumb impressions are of right hand. These are identical in their interse comparison.”

In fact, the decree dated 31.3.1992 was arrived at on the basis of compromise ‘Ex.CX’ and this fact was noticed by the trial Court while decreeing the suit. The judgment dated 31.3.1992 is extracted herein below:-

“1) The suit was instituted on 10.1.91 by the plaintiff against the defendants for declaration as fully detailed in the cause title of the plaint.

2) Defendants no.4 to 6 appeared and filed written statement and admitted the claim of the plaintiffs, whereas defendants No.1 to 3 when appeared and filed written statement, wherein they denied the allegations of the plaintiffs and prayed for dismissal of the suit with costs.

3) *On the pleadings of the parties, the following issues were framed:-*

1) *Whether the plaintiffs are the owners and in possession of the suit land? OPP*

2) *Relief.*

4) *On 26.3.92 parties submitted written compromise Ex.CX. Statements of the defendants No.1 to 3 and the plaintiffs through their father Bhura Singh have been recorded, wherein they admitted the written compromise Ex.CX to be correct.*

5) *In view of the written compromise Ex.CX and admission of defendants No.1 to 3, I grant a decree for declaration to the effect that the plaintiffs are the owners and in possession of the land in suit as fully detailed in the cause title of the plaint, subject to present encumbrances, if any. The defendants No.1 to 3 have no concern with the suit land and the plaintiffs shall be entitled to get the revenue records corrected in their favour. No order as to costs. Decree sheet be prepared.*

File be consigned to the record room

*Pronouncement
31.3.1992*

*Sub Judge II Class,
Bathinda"*

From the perusal of the judgment, it is evident that Sardul

Singh-appellant/plaintiff was arrayed as defendant No.6. The appellant/plaintiff failed to prove ingredient of fraud as provide under Order 6 Rule 4 of the CPC. In the absence of any evidence led in support of the pleadings with regard to alleged fraud, the suit of the appellant/plaintiff cannot succeed and has rightly been dismissed by the trial Court. The mutation in the aforesaid proceedings had been effected immediately after passing of the judgment. There is no illegality much less perversity in the findings rendered by the Courts below as the plaintiff has failed to prove ingredient of Order 6 Rule 4 of the CPC much less any lease in support of the averments that the property had leased out to defendants No.1 and 3 for the last about 25 years and the report of hand writing expert extracted above also found that thumb impressions marked as S1 to S9 were of Sardul Singh's right hand whereas on the written statement, vakalatnama and statement suffered in the civil suit No.25 of 1991, thumb impression were of his left hand.

No fault can be found with the findings of fact and law rendered by the Courts below which are based on appreciation both oral much less documentary evidence.

No substantial question of law arises for adjudication of this appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 30th, 2015
savita