

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1876 of 1987 (O&M)
Date of Decision: 01.02.2016

Charanjit Singh and another

.....Appellants

Vs

Jagtar Kaur (dead) through LRs

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. A.S. Gulati, Advocate for
Mr. S.S. Grewal, Advocate
for the appellants.

Mr. Harish Mehla, Advocate
for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Defendants are in second appeal against judgment and decree dated 21.04.1987 passed by Additional District Judge, Sangrur whereby judgment and decree dated 26.04.1985 passed by Sub-Judge Ist Class, Dhuri was set aside and judgment and decree dated 06.10.1979 was declared ineffective, illegal, null and void and against the rights of the plaintiff.

[2]. Plaintiff Jagtar Kaur filed a suit for declaration to the

effect that she is owner in possession of 1/4th share measuring 10 *Bighas* 3 *Biswas* 15 *Biswansies* out of land measuring 40 *Bighas* 15 *Biswas* 15 *Biswansies* as shown in the plaint. Judgment and decree dated 06.10.1979 was assailed to be collusive, ineffective, illegal, null and void. Prohibitory injunction was also sought, restraining the defendants from alienating 1/4th share of the land in any manner.

[3]. Plaintiff alleged that parties to the litigation were Hindu Jat Sikhs and she inherited the land in dispute after the death of her parents. She never transferred the land in question in favour of defendants by way of any family settlement, nor delivered the possession of the land. Defendants by way of misrepresentation got the suit land transferred in their favour through the Court decree. Plaintiff was confined to bed on account of mental ailment and she remained bed-ridden for a considerable time. On recovery she came to know about the transfer by way of civil Court decree declaring the defendants to be owners of the land in question. The civil Court decree dated 06.10.1979 was claimed to be fraudulent.

[4]. The defendants contested the suit on all counts i.e. maintainability of the suit, limitation and decree being passed on compromise and consent.

[5]. After filing replication, the parties went to trial on

following issues:-

- “1. Whether suit is not maintainable? OPD.*
- 2. Whether suit is within limitation? OPP.*
- 3. Whether judgment and decree dated 6.10.79 is null and void? OPP.*
- 4. Relief.”*

[6]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[7]. Trial Court dismissed the suit holding the suit to be not maintainable and also held the suit to be barred by limitation and civil Court decree dated 06.10.1979 was upheld vide judgment and decree dated 26.04.1985.

[8]. Plaintiff filed appeal against the judgment and decree passed by the trial Court. The lower Appellate Court accepted the appeal vide judgment and decree dated 21.04.1987. Hence the present appeal.

[9]. In the present appeal the controversy can be tested on the following substantial questions of law:-

1. Whether independent suit for declaration and permanent injunction is maintainable in view of bar created under Order 23 Rule 3-A CPC?
2. Whether civil Court decree dated 06.10.1979 being a compromise decree required compulsory registration?

[10]. I have heard learned counsel for both the parties and

have also perused the record.

[11]. Evidently the civil Court decree dated 06.10.1979 came to be passed on the basis of compromise where the plaintiff appeared in the Court below along with her counsel and admitted the compromise deed in civil suit No.562 of 04.10.1979. The decree was implemented in terms of revenue record after sanctioning mutation on the basis of said collusive decree.

[12]. Learned counsel for the appellants contended that particulars of fraud have not been pleaded and proved in the case and the impugned judgment was simply a compromise decree and, therefore, subsequent suit is barred in view of Order 23 Rule 3-A CPC. No suit shall lie to set aside the decree on the ground that the compromise on which the decree was passed was not lawful.

[13]. In the Instant case, the plaintiff has challenged the resultant decree based on compromise on the ground that she was ailing at the relevant time and was not in a position to give free will for execution of said compromise which ultimately resulted into decree. The ailment with which the plaintiff was suffering at the relevant time was stated to be Epilepsy.

[14]. In order to substantiate the plea of ailment, the plaintiff got examined Dr. Surjit Singh PW-4, who stated that Jagtar

Kaur was suffering from Epilepsy from the years 1976 to 1982 and she got treatment from him upto the year 1984. The deposition of Doctor was not in the context of proving that she was confined on account of Epilepsy and was not in a position to re-capitulate the facts and there was a loss of memory or she was totally incapacitated on account of such ailment in terms of faculty of mind and physical movements. In common parlance Epilepsy/Mirgi is not such an ailment which would confine the patient totally for all time to come, rather mental condition in such a disease is intermittently impaired and no such permanent feature is attached to such ailment.

[15]. The statement of Doctor was not sufficient to draw any such presumption as to whether the plaintiff was totally incapacitated on account of such ailment. Secondly the plaintiff appeared in the earlier suit after engaging an Advocate and made statement before the Court below Ex.D-4.

[16]. The particulars of fraud have not been pleaded in the plaint in terms of Order 6 Rule 4 CPC. On the contrary report of expert Ex.DW-6/A i.e. report of Sh. Dewan K.S. Puri pointed out that Jagtar Kaur appeared in the Court and filed the written statement, compromise and also suffered statement in favour of present defendants. The decree was based on written compromise Ex.DW-2.

[17]. In view of bar created under Order 23 Rule 3-A CPC, no suit shall lie to set aside the decree on the ground that compromise on which the suit was based was not lawful. At the most the plaintiff could have filed application in the said suit as all the issues are required to be decided in the same suit. Since particulars of fraud have not been pleaded and proved in the case, therefore, the suit was not maintainable in view of bar created under Order 23 Rule 3-A CPC.

[18]. After the execution of decree the plaintiff cannot presumed to be co-sharer since the decree was based on compromise on account of family settlement. Plaintiff is Bua of the defendants. She was married long back and was living in her matrimonial house. The decree based on compromise pointed out semblance of interest and was not required to be compulsorily registered as the decree recognised pre-existing right of the defendants and it cannot be said that right was created in favour of defendants for the first time.

[19]. In view of aforesaid discussion, both the questions of law are to be answered in favour of the appellants to hold that subsequent suit is barred in terms of Order 23 Rule 3-A CPC and subsequent decree dated 06.10.1979 was not required to be compulsorily registered.

[20]. Since the civil Court decree dated 06.10.1979 was not

fraudulent, therefore, filing of suit on 26.08.1983 was patently barred by limitation. Apparently marriage of the plaintiff was solemnised about 40 years back. Her father died about 25 years back. Her father had two sons and two daughters. The statement of Dr. Surjit Singh was not sufficient to demonstrate the ailment of plaintiff to be continuous for the period of 30 years. No particulars of treatment have been brought on record with reference to diagnosis. Even, if, the disease Epilepsy is taken to be in consideration, the same cannot be presumed to be a continuous disease during 30 years in the absence of any such evidence on record.

[21]. The plaintiff was treated by registered medical practitioner/R.M.P. doctor. The power of attorney of plaintiff was executed in favour of Sh. Hem Raj, Advocate (since deceased) and compromise Ex.D-1 and Ex.D-2 were executed. The plaint of the earlier suit was proved on record by way of certified copy which was proved by Sh. Raghubir Rattan, Advocate-PW-2. The statement submitted by plaintiff in the earlier suit Ex.D-3 and Ex.D-4 coupled with statement of Charanjit Singh-DW-3 proved the case of the defendants on the requirement of preponderance and probability.

[22]. Taking into consideration the facts and circumstances of the case, this Court cannot subscribe the view taken by the

lower Appellate Court inasmuch as that the decree based on compromise was legally required to be questioned in the same suit and the subsequent suit is barred in terms of Order 23 Rule 3-A CPC. The plaintiff cannot be held to be co-sharer in the land and suit based on title is within limitation.

[23]. After the civil Court decree dated 06.10.1979, no title remained with the plaintiff. Since the decree is based on compromise and particulars of fraud have not been pleaded and proved, therefore, no such title can be presumed in favour of the plaintiff and the suit itself was not maintainable.

[24]. Learned counsel for the respondent could not point out as to how claim of the plaintiff/respondent is sustainable in view of aforesaid facts.

[25]. Having considered the issue, I am of the considered view that the impugned judgment and decree passed by the lower Appellate Court cannot be upheld, resultantly impugned judgment and decree dated 21.04.1987 passed by Additional District Judge, Sangrur is set aside and judgment and decree dated 26.04.1985 passed by Sub-Judge, 1st Class, Dhuri is restored. Present appeal is allowed, parties to bear their own costs.

February 01, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**