

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

**Regular Second Appeal No.3521 of 1987 (O&M)
Date of Decision: February 01, 2016.**

Rattan Lal and others

.....APPELLANT(s).

VERSUS

Jawatri and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjeet Singh, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Appellants-plaintiffs Rattan Lal and Purshotam Lal sons of Nathi Ram filed suit seeking declaration that they are owners in possession of property shown as ABEFGHIJ in the site plan (Ex.PW9/1) and the defendants have no right to get the portion of this property shown as KLMNEFGH.

2. The case of the plaintiffs revolves around the plea that in between the property of plaintiffs and defendants, there is a two and half feet wide street. The defendants filed a suit claiming property mentioned with letters KLMNEFGH showing Nathi Ram as owner of the suit property. Plaintiff Rattan Lal was also party in that suit but was later on given up at the time of final arguments. Suit was decreed declaring existence of 5½ feet

wide street between the properties of plaintiffs and defendants. Plaintiffs have averred that the judgment and decree passed in that suit is not binding upon the plaintiffs. That decree is against law and based on misrepresentation.

3. The defendants contested the claim of plaintiffs inter-alia pleading that the matter in dispute has already been settled in the previous civil suit No.190 of 1970/524 of 1968. The judgment and decree passed in that civil suit was affirmed in appeal and then in regular second appeal by this Court vide judgment dated 25.11.1982. The present suit is collusive between the plaintiffs and their father namely Nathi Ram, who was defendant in earlier suit. Plaintiffs-appellants have filed the present suit in order to avoid the execution of the decree passed in the earlier suit.

4. On merits, it was alleged that towards the western side of house of plaintiffs, there is a five and half feet street known as '*Gali Moriyar*'. The width of that street has been wrongly given by the plaintiffs as two and half feet and it has been so held by the Court in civil suit No.190 of 1970/524 of 1968. The plaintiffs are not owners of the suit property, described as KLMNEFGH in the plaint.

5. Plaintiffs re-asserted and reiterated their case in the replication.

6. Both the Courts below dismissed the suit of plaintiffs. It was observed by both the Courts below that the matter in dispute has already been settled in the earlier suit between the parties and there exists a five and half feet wide street in between the houses of plaintiffs and defendants, and Nathi Ram had encroached upon the portion of the street shown as red with

letters KLMNEFGH in the site plan.

7. Learned counsel for the appellants-plaintiffs, while referring to the judgment passed in civil suit No.190 of 1970/524 of 1968 decided on 06.11.1970, has argued that in that suit, plaintiffs were not party. They have produced evidence that the suit property had fallen to their share in a family settlement that took place in the year 1967, as such, Nathi Ram was not owner of the suit land when the earlier suit was filed and the decree against Nathi Ram and others is not binding on the plaintiffs.

8. In the civil suit filed by Chhajimal, Pandit Lal Chand and Rashpal (civil suit No.190 of 1970/524 of 1968), the matter in dispute was the street which is in dispute in present suit. That suit was filed against Kirpa Ram, Girraj Saran, Nathi Ram (father of plaintiffs) and Rattan Lal (plaintiff No.1), partners of M/s Arya Firm Timber Merchant, G.T. Road, Palwal. The plaintiffs alleged that there is a five and half feet wide street between their house and houses of defendants and sought direction to the defendants to remove the construction raised by them in '*Gali Moriyar*'. That suit was decreed by the then Sub Judge Second Class, Palwal vide judgment dated 28.12.1971. The defendants in that suit were directed to remove the construction raised by them from the street and restore it to the previous position.

9. Before proceeding further, it will be relevant to have a note of the fact that earlier suit was withdrawn against defendant Girraj Saran and plaintiff No.1 Rattan Lal, at the time of agreement.

10. The matter was finally decided in regular second appeal No.1407 of 1973 filed by Kirpa Ram and Nathi Ram, with observations as

follows:-

“After hearing the learned counsel for the parties and going through the relevant records, I am of the considered opinion that there is no infirmity or illegality in the findings of the lower appellate Court as to be interfered with in second appeal. The lower appellate Court has discussed the entire evidence on the record, documentary as well as oral, and has given a firm finding that the existence of the Gali in dispute on the Western side of the property is fully proved by the documentary evidence. The plaintiffs' suit qua a portion of the Gali was dismissed mainly on the ground that the wall TZ was an old construction and, therefore, the plaintiffs' suit with respect to that wall and the portion of the Gali TZ NM was time barred. Therefore, the same analogy could not be applied with respect to the other portion of the Gali. From the report of the Local Commissioner, referred to above, it is quite evident that the defendants raised construction on the disputed Gali at the time of the filing of the suit and later on they were restrained from raising any further construction thereon by the trial Court. This report of the Local Commissioner was never challenged by the defendant-appellants in the trial Court. Therefore, in these circumstances the contention raised on behalf of the defendant-appellants that the mandatory decree, if maintained in appeal as passed by the Courts below, will cause irreparable loss to both the parties and, therefore, no such futile decree should be passed, has no substance. The defendants cannot be allowed to take benefit of their own wrong. Moreover, from the decree of the trial Court passed in favour of the plaintiffs, it is clear that the defendants were required to restore this Gali in its previous position and, therefore, any apprehension on the part of the defendants is without any basis.”

11. This appeal was earlier dismissed vide order dated 21.01.1988. The appellants preferred Special Leave Petition before the Hon'ble Apex Court and vide order dated 02.05.1988, Special Leave Petition was dismissed and the appellants were allowed remedy to make application for review of the order dated 21.01.1988. Thereafter, the appellants filed review petition to press upon the point that the judgment and decree passed in the earlier suit was not binding on them. Vide order dated 26.09.1988, review application was allowed and order dated 21.01.1988 dismissing the appeal was recalled.

12. I have heard learned counsel for the appellants and have gone through the paper book and record of the Courts below with his assistance.

13. Learned counsel for the appellants has argued that the judgment and decree passed in the earlier suit is not binding on the appellants as they had become owner of the suit property on the basis of family settlement with their father Nathi Ram in the year 1967. The lower Court has raised doubt about that family settlement and made some observations beyond record. In the year 1968, when the earlier suit was filed, the suit property was not owned by Nathi Ram, as such, the judgment and decree passed in that suit against Nathi Ram and others is not binding on the appellants-plaintiffs.

14. Before proceeding further, it will be relevant to have a note of certain facts which find mention in para 24 of the judgment passed by the then Additional Senior Sub Judge, Palwal and read as follows:-

“24. Before parting with the finding on this issue, I would like to bring this fact on the file that previously the father of the plaintiffs went up to Hon'ble High Court

by way of filing appeal in civil suit no.524 of 1968 which was decreed on 28.12.1971, posing himself to be owner in possession of this property in dispute and ultimately the Hon'ble High Court holding this Nathiram to be the owner in possession of the property in dispute ordered vide order dated 25.11.82 Ex.D6 that a street having width 5½ feet be got vacated by demolishing this building on the portion shown in red colour in site plan Ex.PW9/1. Two months time was given to this Nathiram who was the defendant in that suit and the defendants in the present suit were the plaintiffs in that suit. When period of two months as given by Hon'ble High Court vide order Ex.D6 was going to expire on 25.11.83 (sic 25.01.1983) that Nathi got filed the present suit by the plaintiffs on 6.1.83 seeking injunction against the execution of that decree which was maintained even by the Hon'ble High Court vide order Ex.D6.”

15. Now, the question raised by learned counsel for the appellant in this appeal is that the judgment and decree passed in the civil suit No.190 of 1970/524 of 1968 decided on 28.12.1971, is not binding on the appellants as they had become owner of the suit property as a result of family settlement that took place in the year 1967.

16. There is no iota of truth in this plea raised by learned counsel for the appellants-plaintiffs in view of the pleadings in the earlier civil suit where Rattan Lal plaintiff-appellant was himself a party. Chhajimal and others had filed civil suit (524 of 1968/190 of 1970) against Kirpa Ram, Girraj Saran, Nathi Ram and Rattan Lal relating to the street in dispute claiming that the disputed street is five and half feet wide. In that suit,

defendants including Rattan Lal (now appellant-plaintiff) filed written

statement (Ex.D7), wherein no plea was taken by Nathi Ram about any family settlement with plaintiffs. Written statement (Ex.D7) is dated 23.10.1968, wherein a specific plea was taken that the suit property is owned by defendant No.1 Kirpa Ram and defendant No.3 Nathi Ram and defendant No.2 Girraj Saran and defendant No.4 Rattan Lal(now appellant-plaintiff) have no concern with the suit property. A preliminary objection was taken that the suit was bad for misjoinder of defendants No.2 and 4 as necessary parties. It was repeatedly pleaded in the written statement (Ex.D7) that the suit property vests in defendants No.1 and 3, who have raised construction. It was in context of this plea that the counsel for the plaintiffs withdrew that suit against defendants No.2(Girraj Saran) and 4(Rattan Lal), during the course of final arguments. Had there been any family settlement between Nathi Ram and appellants-plaintiffs in the year 1967, the same would have been pleaded in the earlier suit. Rather, a plea to the contrary was raised by Nathi Ram and Rattan Lal which shows that the alleged family settlement of the year 1967 is just an after-thought and the documents created and produced in this regard were fabricated at later stage. This goes to show that upto the date of filing of written statement by Nathi Ram and Rattan Lal in the earlier suit i.e. 23.10.1968, they had been admitting the property in dispute being owned by Nathi Ram and Kirpa Ram. This operates as estoppel and appellants-plaintiffs stood barred from raising any plea of their title over the suit property.

17. There is another aspect which shows the falsity of the claim raised by the appellants-plaintiffs. The civil suit filed against Kirpa Ram,

Nathi Ram and others was decreed in 1971. Rattan Lal was also party in that

suit. Though the suit was withdrawn against him at the time of final arguments, the present suit was filed on 06.01.1983 after finally losing in the regular second appeal (RSA No.1407 of 1973, decided on 25.11.1982) and when the judgment in that case was to be executed. Had there been family settlement in the year 1967 and Rattan Lal plaintiff being aware of the dispute would not have waited till 1983 to file this suit, rather would have either raised a plea of their title over the suit property based on family settlement in earlier suit or had filed a separate suit immediately, but in no case would have waited for 15 years to file this suit. This suit is a sheer misuse of the process of Court. The matter in dispute had been finally decided in 1982 by this Court but the appellants-plaintiffs by raising false plea have allowed this litigation to continue for a period for 33 years thereafter.

18. Perusal of the plaint of this case shows that though the plaintiffs have claimed ownership over the suit property, yet they have nowhere pleaded any family settlement of the year 1967, however, attempt was made to prove the same by leading evidence. This shows that the plaintiffs, well aware of pleadings in the previous suit, avoided to plead any family settlement of year 1967 in the plaint.

19. In view of my above discussion, I find no legal or factual infirmity in the judgments passed by the Courts below, calling for any interference.

20. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

22. As the execution proceedings of decree in civil suit No.524 of 1968/190 of 1970 confirmed in RSA No.1407 of 1973 on 25.11.1982 have been delayed by more than 33 years due to filing of this suit, the executing Court in that case is directed to expedite the execution proceedings and finalise it within six months of the receipt of copy of this judgment.

February 01, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE