

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1552 of 2003 (O&M)

Date of Decision: 12.04.2016

Amar Singh

... Appellant(s)

Versus

Karam Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Ashok Singla, Advocate
for the appellant(s).

Mr. Amarjit Singh Virk, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present regular second appeal against the judgment & decree dated 10.3.2003, passed by learned Additional District Judge, Barnala, whereby judgment & decree dated 8.9.2000, passed by learned Additional Civil Judge (Senior Division), Barnala was set aside.

For the sake of convenience, parties are being referred to as per their status before the Court of first instance.

Relevant facts of the case that plaintiff had filed a suit for

declaration and permanent injunction that he is owner in possession of suit land and the judgment & decree dated 18.10.1983 passed in civil suit No. 707 dated 18.10.1983 is illegal, null and void and liable to be dismissed.

As per plaintiff, suit property is joint hindu family coparcenary and ancestral property recorded in the name of Gajjan Singh. The same was owned by Gajjan Singh and his three sons, who are plaintiff and defendants in the suit. Plaintiff has a birth right in the suit property. However, defendants wanted to grab the share of the plaintiff and filed civil suit No. 707 dated 18.10.2013 and got the decree passed in their favour illegally without serving any notice upon the plaintiff and the said decree is liable to be set aside and value of the property was more than Rs.100/- and the property could not be transferred except through registered document. No family settlement was ever arrived at in respect of the suit land and the said decree be set aside and the entries recorded in the revenue record by way of mutation No. 5339 dated 26.3.1984 are also liable to be set aside.

Defendants contested the suit taking preliminary objection that the suit was not within the limitation period and the same was not maintainable as has not been valued properly for the purpose of court fee and jurisdiction. Defendants took the plea that suit property was neither a joint hindu family coparcenary property nor the plaintiff and defendants constituted hindu family. Defendants denied that there was any connivance amongst them for getting decree dated 18.10.1983 passed fraudulently, rather the same was passed in accordance with law

and the same is legal and valid decree. The plaintiff was not the necessary party. Defendants took the stand that there was family settlement and the decree was passed on the basis of said family settlement and at that time, plaintiff did not raise any objection. More so, defendants are owners in possession of the suit land since the execution of family settlement and prayed that suit be dismissed.

On these facts, the Court of first instance settled the issues and parties were put to trial. The Court of first instance, after recording of evidence of both the parties and appreciating thereof, returned the findings that judgment & decree dated 18.10.1983 (Ex.P5) is illegal, null and void and the suit was filed within the period of limitation and as such decreed the suit of plaintiff. Defendants preferred an appeal and the first Appellate Court accepted the same and reversed the findings of the Court of first instance and consequently the suit of plaintiff was dismissed and as such regular second appeal before this Court.

Learned counsel for the appellants submitted that the suit property was self acquired property of Gajjan Singh. The decree (Ex.P5) requires compulsory registration in view of judgment rendered by the Hon'ble Supreme Court in case ***Bhoop Singh v. Ram Singh Major 1995(5) SCC 709***, because no rights were created on the basis of compromise. On the same point reliance was placed upon judgment rendered by Hon'ble the Apex Court in ***Phool Patti and Another v. Ram Singh (Dead) through LRs. and Another 2015(1) RCR (Civil) 606*** and ***Jang Bahadur and Others v. Bhairthi 2006(2) RCR (Civil) 145***.

Learned counsel for the appellant also submitted that Gajjan Singh never appeared at the time of passing of the decree and somebody else was produced and as such passing of decree (Ex.P5) was the result of fraud and on that account, said decree is liable to be set aside and the first Appellate Court reversed the findings of the Court of first instance without any reason and said findings are liable to be reversed and suit of the plaintiff requires to be decreed.

While arguing on this point, learned counsel for the respondents submitted that the decree (Ex.P5) was passed on 18.10.1983, whereas Gajjan Singh died on 9.5.1985. Even mutation was sanctioned in the presence of Gajjan Singh on 26.3.1984. Gajjan Singh never challenged the decree during his life time, though he survived for the period from 1983 till 9.5.1985. The execution of decree has been duly proved on the file. More so, Sh. Balwant Singh Mann, Advocate had stepped into the witness box as DW.2, who deposed that decree (Ex.P5) was passed at the instance of Gajjan Singh. The Handwriting Expert was also examined. The suit property was self acquired property of Gajjan Singh. The said family partition was already operative and no new rights were created, rather same was recognition of pre existing rights only and as such decree was not required to be compulsorily registered. On this point, reliance was placed upon the recent judgment of Hon'ble the Apex Court in ***Bachan Singh v. Kartar Singh and Others 2002(3) RCR (Civil) 495*** and view taken by this Court in ***Raj Kali v. Jitender 2010(5) RCR (Civil) 790*** and ***Gobind Singh and Others v. Smt. Lachhmi 2012(2) PLR 375*** and present

appeal is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of the record of the case, this Court is of the considered view that the fact is not disputed that Gajjan Singh was the owner of the property in dispute and was competent to enter into family settlement with the defendants. As per plaint (Ex.P1) filed in earlier suit on 10.10.1983, family arrangement had taken place amongst Karam Singh, Pritam Singh and Gajjan Singh and as a result of that, the suit property fell to their share and since then they were owners in possession thereof and Gajjan Singh was bound to get the mutation entered and sanctioned in their favour. Gajjan Singh filed admitted written statement (Ex.P2) and his statement was also recorded on 18.10.1983 (certified copy whereof is Ex.P3). On the basis of admission of Gajjan Singh and his statement having been recorded before the Court, the suit was decreed and decree (Ex.P5) was passed. That way, decree (Ex.P5) was certainly a result of family settlement.

As regard to the plea taken by learned counsel for the appellant that Gajjan Singh was not present in the Court, the same is contrary to the record as has been established in view of the statement of Dr. Atul K. Singla, Handwriting & Finger Print Expert, Patiala. The first Appellate Court rightly observed that science relating to handwriting and finger print is a perfect science and on that basis, the decree was passed at the instance of Gajjan Singh. More so, Gajjan Singh had not challenged the said decree during his life time i.e. up to 9.5.1985. More so, mutation was sanctioned in the presence of Gajjan

Singh on 26.3.1984 and he had not challenged the mutation even though the said mutation was sanctioned in his presence.

Law on the point is settled that once decree was passed on a compromise of family arrangement, family arrangement should not be disturbed by the Court. Such a view was taken by the coordinate Bench of this Court in ***Gobind Singh's case*** (*supra*). Similar view was also taken by another coordinate Bench of this Court in ***Raj Kali's case*** (*supra*).

As regard to registration of decree (Ex.P5), the said decree does not require compulsory registration as per the view taken by Hon'ble the Apex Court in ***Bachan Singh's case*** (*supra*).

As regard to non-impleadment of the plaintiff in the earlier civil suit on the basis of which decree (Ex.P5) was passed, the first Appellate Court has rightly taken the view that on the basis of family settlement, the Civil Court decree (Ex.P5) was passed and the defendants had already become owners in possession of the suit property on the basis of family settlement which took place five years before the passing of decree and as such there is no necessity to implead the plaintiff in the suit and the Court of first instance placed reliance upon the judgment of this Court in ***Babu Ram v. Kundan and Others 1997(1) CCC 437***.

As regard to finding on issue No.4, the first Appellate Court has rightly set aside the fact finding on the ground that decree was passed on 18.10.1983 (Ex.P5) and the suit challenging the said decree was filed on 8.12.1997, whereas Gajjan Singh died in the year 1985.

The said decree was not challenged by Gajjan Singh and the limitation period to challenge the said decree is three years. The said decree could be challenged by Gajjan Singh within three years from 18.10.1983 but the same was not challenged as the suit filed by plaintiff challenging the said decree on 8.12.1997 is beyond the period of limitation. Such a view was taken by the Division Bench of this Court in case ***Jagjit Singh v. Pritam Singh and Others 1994 PLJ 171 (P&H)***. More so, mutation (Ex.P9) was sanctioned and the decree was not challenged within three years of sanctioning of mutation (Ex.P9) and the fact finding on issue No.4 was rightly reversed by the Court of first appeal.

In view of above, present appeal, filed by the appellant is without any merit and the same stands dismissed. Consequently, the judgment & decree passed by learned Additional District Judge, Barnala stands affirmed and the judgment & decree, passed by the Court of first instance, is set aside.

(Shekher Dhawan)
Judge

April 12, 2016
"DK"