

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

**RSA No.2635 of 2010 (O&M)
Date of decision:23.05.2016**

Mangal Singh

... Appellant

Vs.

Kulwant Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Jai Vir Yadav, Advocate
for the appellant.

Mr. Anil Kshetarpal, Senior Advocate with
Mr. Bhag Singh, Advocate and
Mr. Rohit Nagpal, Advocate
for the respondents.

AMIT RAWAL J.

C.M.No.11015-C of 2011

The application is allowed, subject to all just exceptions. Legal representatives of respondent No.2, as mentioned in the application, are ordered to be brought on record for the purpose of prosecuting the present appeal.

RSA No.2635 of 2010 (O&M)

Appellant-defendant is aggrieved of the concurrent findings of facts and law, whereby, plaintiff has been granted declaration to the effect that he is owner in possession of half share of agricultural land and judgment and decree dated 08.03.1982 rendered in civil suit no.83/82 titled

as Mangal Singh vs. Sewa Singh, has been set aside and consequentially mutation bearing No.1380 sanctioned on the basis of the aforementioned judgment and decree.

Mr. Jai Vir Yadav, learned counsel appearing on behalf of the appellant-defendant submits that respondent-plaintiff instituted a suit claiming the aforementioned relief on the ground that plaintiff and appellant-defendant being the sons of deceased Sewa Singh alias Chajja Singh son of Gursharan Singh son of Gopal Singh, who, had an agricultural land in his name as detailed in the head note of the plaint and claiming that it was ancestral and therefore, defendant had right in the same by birth, whereas, it was a self acquired property of the father, who, had voluntarily suffered a decree in favour of the appellant-defendant. All these facts were in the knowledge of the plaintiff and no explanation has come forth in filing a suit in the year 1996. Though the appellant-defendant had taken the alternative plea of adverse possession but the fact remains that plaintiff was the knowledge of the judgment and decree as the father of the parties purchased the certain land in the name of the plaintiff from the Hindu Joint Family Fund abetting the main road in the year 1963. He further submits that both the Courts below have committed illegality and perversity in returning a finding that judgment and decree dated 08.03.1982 was based upon fraud and misrepresentation, rather no ingredients of fraud and misrepresentation as enshrined under Order 6 Rule 4 of the Code of Civil Procedure, have been taken, much less, proved. Both the Courts below have further gravely erred that appellant-defendant had proved on record that Sh. Hazara Singh, Advocate was engaged to represent Sewa Singh in a suit

resulting into judgement and decree, aforementioned by producing DW1-Labh Singh and DW2-Sh. D.M.Tiwana, Advocate. Both the witnesses have clearly stated that Sewa Singh had engaged Hazara Singh and they have seen Hazara Singh's signatures and writing. DW1-Labh Singh being clerk working in the office of Sh. D.M.Tiwana, Advocate, was colleague of Hazara Singh and thus, he had the special knowledge about the signature and hand writing of Hazara Singh. Umpteen number of documentary evidence has been placed on record to prove the adverse possession. Sewa Singh during his life time did not challenge the aforementioned consent decree and he remained alive for four years as he died in the year 1986. Since the property has been held to be not co-parcenary, therefore, Sewa Singh having acquired the interest by his own dint and hard work could have dealt with the property in any manner he wanted to. Even simpliciter suit for declaration without consequential relief of possession was not maintainable and thus, urges this Court to formulate the following substantial questions of law:-

- 1) *Whether the impugned judgments/decrees passed by learned Courts below in respect of consent decree dated 8.3.1982 is based upon mis-reading of pleadings and evidence of the respondent/pleadings and as such are illegal?*
- 2) *Whether the impugned judgments/decrees to the extent it is adverse to the interest of the appellant is based upon misreading and mis-construing the evidence on record is illegal?*
- 3) *Whether the learned Courts below have wrongly held the*

suit for declaration without consequential relief of possession to be maintainable, is illegal?”

Mr. Anil Kshetarpal, learned Senior Counsel assisted by Mr. Bhag Singh and Mr. Rohit Nagpal, Advocates appearing on behalf of the respondents submits that ingredients of fraud have already been proved on record, for, both the Courts below after examining the oral and documentary evidence, much less, report of the expert found that judgment and decree suffered by the parties indicated that there was some family settlement, whereas, no family settlement had taken place, rather perusal of the plaint of the suit aforementioned, it is seen that even appellant did not mention that plaintiff was also son of Chhajja Singh and he was not made a party, particularly, when the judgment and decree based upon the family settlement, the Court in the aforementioned suit ought to have examined this fact. The suit had been filed on demise of Chhajja Singh alias Sewa Singh in the year 1996. In the aforementioned suit, it was only mentioned that the appellant-defendant herein was the real son of the Sewa Singh and constituted a joint family. The factum of respondent-plaintiff was not disclosed. On acquiring the knowledge of the illegal act on 15.07.1996, the suit was filed immediately in the year 1996, thus, suit cannot be said to be barred by law of limitation as ingredients of Article 59 of the Limitation Act, have duly been complied with. There is a specific averment in paragraph 2 with regard to acquisition of knowledge and thus, urges this Court for affirming the findings under challenge as no substantial question of law arises for adjudication of the present appeal.

I have heard learned counsel for the parties and appraised the

impugned judgments and decrees of the Courts below and of the view that appeal sans merit, for, once the appellant-defendant had taken the plea of adverse possession, dehor of the fact that he had a decree dated 08.03.1982 in his favour, means that he was not sure of his ownership as he thought that property to be ancestral in nature, therefore, taken up such plea. By taking up the plea of adverse possession, the ownership of other party is deemed to be admitted. No evidence has been led on record to show the continuous, long and settled possession, whereas, the revenue record, Ex.P7, copy of jamabandi for the year 1985-86, Ex.P8, copy of mutation, Ex.P9 copy of jamabandi for the year 1917-18 (in Urdu script), Ex.P10 copy of jamabandi for the year 1917-18 (in Hindi script), Ex.P11 copy of mutation of inheritance No.2067 (in Urdu script), Ex.P12 copy of inheritance No.2067 (in Hindi script), Ex.P13, copy of jamabandi for the year 1939-40 (in Hindi script), Ex.P14, copy of jamabandi for the year 1939-40 (in Urdu script), Ex.P15 and Ex.P16 copy of mutation of inheritance no.1398, Ex.P17 Khatauni Pamaish in Urdu script, Ex.P18 khatauni Pamaish in Hindi script, Ex.P19 copy of jamabandi for the year 1963-64, proved the nature and character of the property being ancestral and thus, Sewa Singh could not have alienated the property in the manner and mode, i.e., by suffering an collusive decree. In fact, while not impleading the respondent-plaintiff and branding himself only son of Sewa Singh, appellant-defendant procured the decree tantamount to that he wanted to usurp the property of his father clandestinely. Even the respondent-plaintiff examined the documents expert, who stated that written statement and Iqarnama did not bear the thumb impressions of Sewa Singh. The aforementioned evidence has not

been rebutted.

There is another aspect of the matter. Defendant examined only an advocate engaged by him, i.e., Davinder Mohan Tiwana. Sh. Hazara Singh, who, was allegedly being counsel of Sewa Singh has not been examined. Identification of the signatures of the counsel by Davinder Mohan Tiwana, who, appeared as DW are thus of no relevance, in essence, no evidence has come on record to suggest that Sh. Hazara Singh was allegedly engaged by Sewa Singh. Even during the pendency of the matter, appellant-defendant had moved an application that a compromise dated 27.06.1996 had taken place. Issues were framed and evidence was led. The trial Court arrived at a finding that compromise aforementioned, did not pertain to the suit property in dispute. In my view, the appellant-defendant had adopted all possible ways and means, even taken the pleas available under the law to thwart the claim of the respondent-plaintiff.

As regards the plea of Mr.Yadav, qua non-maintainability of the plaint, in the absence of the claim for possession, I am of the view that aforementioned plea is devoid of merit because there is a categoric pleading that, plaintiff is in possession. In view of such categoric averment, in my view, suit could not be said to be maintainable for want of relief of possession.

Keeping in view the aforementioned observations, I am of the view that no ground is made out for interference in the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 23, 2016
savita