

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1286 of 2011 (O&M)
Date of decision : February 9th , 2016

Kuldeep Singh and others

..... Appellants

Versus

Zile Singh and others

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sunil Chadha, Senior Advocate with
Mr. Chetan Bansal, Advocate and
Ms. Swati Verma, Advocate
for the appellants.

Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull, Advocate and
Mr. Surender Singh Dhull, Advocate
for the respondents.

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?

Amit Rawal, J.

The appellants-plaintiffs who failed in both the courts below are in Regular Second Appeal against the concurrent finding of fact whereby they sought intervention of the court for setting aside the judgment and decree dated 6.11.1969 passed in Civil suit No.2298 in favour of defendants-respondents and against the appellants-plaintiffs.

Mr. Sunil Chadha, learned Senior Counsel assisted by Mr.Chetan Bansal and Ms. Swati Verma, Advocates appearing on behalf of the appellants submits that suit bearing Suit No. 176 dated 13.6.1997 was filed on the premise that the decree aforementioned

allegedly executed in favour of the defendants was the outcome of fraud and mis-representation as defendants had no relationship, much less are not collaterals of Dharab Singh whereas plaintiffs are successors-in-interest. Darab Singh died in the year 1972 being issueless and left behind sister Bhulli who had two sons Hukam Singh, Ajmer Singh and daughter Sunhari. The aforementioned are predecessor-in-interest of the plaintiffs. The decree aforementioned had not seen light of the day. Mutation entered in the year 1971 is also not sustainable in the eyes of law. It has been proved through the testimony of witnesses that the defendants are in illegal possession of land measuring 814 Kanals. Darab Singh never appeared before the trial court nor admitted the contents of the averments made in the suit. The decree created right for the first time as the respondents-defendants are not collaterals, therefore required registration.

He further submits that the defendants had filed the suit on 15.1.1993 in respect of land measuring 175 kanals claiming the right in the property on the basis of un-registered Will dated 6.12.1971. The said Will was dis-believed by both the courts below, much less by this Court in RSA No. 3657 of 2000 decided on 23.7.2008 vide Ex.PZ. The Will has been dis-believed upto the Hon'ble Supreme Court. The courts below have committed illegality and perversity in dismissing the suit of the plaintiffs by relying upon the decree and as well as on the ground that the suit was barred by law of limitation. The decree and mutation are of the year 1971 whereas the suit has been filed in the year 1997 and that there is no

limitation for claiming the title. Since the defendants have been found to be in illegal possession, possession was sought. The finding arrived at by both the courts below that plaintiffs have miserably failed to prove the relationship with Darab Singh are illegal, as umpteen number of documents have been brought on record to show the relationship, thus , the following substantial question of law arises for determination by this Court:-

- i) *“In view of the findings recorded between the parties in the judgment and decrees Ex.P1 to P4 and which findings have been upheld in RSA No. 3657 of 2000 by this Hon’ble Court, whether the suit of the plaintiffs/appellants for possession of the land in dispute being the legal heirs of late Darab Singh deserve to be decreed?*
- ii) *Whether any reliance can be placed on a mutation, without producing the primary document, on the basis of which the alleged mutation had been sanctioned?*
- iii) *Whether a person claiming himself to be owner of the property can claim to be in adverse possession and whether such pleas are mutually destructive to each other?*
- iv) *Whether the findings recorded by the courts below are perverse being the result of misreading of the evidence on record and the pleadings of the parties?*
- v) *Whether in the facts and circumstances of the present case the judgment and decree of the courts below are legally sustainable being based on misreading of evidence on record.”*

Mr. Arun Jain, Senior counsel assisted by Mr. Abhishek Dhull and Mr. Surender Singh Dhull, Advocates appearing on behalf of the respondents submits that the simpliciter suit was not maintainable as limitation to seek the possession is 12 years whereas the defendants are in possession of the property right from the date of judgment and decree, much less mutation dated 17.5.1979 Ex.D-6 whereas the suit was filed in the year 1997. As per Article 64 of the Limitation Act, 1963 the limitation period is 12 years.

In the absence of relief of declaration, the plaintiffs cannot be permitted to take the plea that there is no limitation for claiming title. It has been proved on record that the mutation was effected after looking at the contents of the decree and it was ordered that mutation was recorded in the presence of Darab Singh and the Assistant Collector Grade-II signed the mutation after noticing the contents of the decree sheet. The statement of PW-2 has not proved the case of the plaintiffs as the said decree was not passed but said witness only stated that the decree was not traceable, and thus, prays for dismissal of the appeal. In support of his contentions he relies upon the judgments in **Harpal and others Vs. Smt. Ram Piari and others 1981 PLJ 492, Pushpa Devi Bhagat (D) through L.Rs smt.Sadhna Rai Vs. Rajinder Singh and others 2006 (3) RCR (Civil) 479, Som Dev and others Vs. Rati Ram and another 2006 (4) RCR (Civil) 303, Lichhami Devi and others Vs. Bharpai and others 2012 (5) RCR (Civil) 628, Uttam Singh Dugal and Co.Ltd.Vs. United Bank of India and others 2001(2)PLR 694, Jagdish Vs. Ram Karan 2003(1) RCR (Civil)**

657, Gurdev Singh and others Vs. Kartar Singh and others 2003 (2) RCR (Civil) 655 and Manjit Singh and others Vs. Bachna Ram and others 2010 (1) PLR 611 to contend that the consent decree did not require registration.

Mr. Sunil Chadha, learned Senior counsel in rebuttal has relied upon the judgments in **Harabans Singh and others Vs. German Singh (dead) through his L.Rs and others 2011 (5) RCR (Civil) 799 and Santosh Vs. Jagat Ram and another 2010 (3) SCC 251** to contend that suit for setting aside decree filed after about 5 years when fraud come to notice aggrieved party, same would not be barred by limitation.

I have heard learned counsel for the parties, appraised the paper book and the case law cited at bar, am of the view that the appeal deserves to be dismissed for the following reasons.

The dismissal of the Regular Second Appeal and dis-believing of the will set up by the defendants would be meaningless. The earlier suit instituted by the defendants has ultimately been dismissed by the Hon'ble Supreme Court and the genesis of the same was based upon the Will whereas in the present case, the appellants-plaintiffs have filed the suit for possession being collaterals of Dharab Singh. The provisions of Section 50 of the Indian Evidence Act, 1872 have not been complied with. In essence, no relative has been examined to prove the relationship of plaintiffs with Darab Singh. Even revenue record does not connect the relationship of the plaintiffs with Darab Singh, much less their

predecessor-in-interest. The limitation to file the suit for possession is 12 years. The plaintiffs have not explained as to how and when defendants came into possession whereas on the contrary, Ex.P-6 mutation entered is of the year 1997. Plaintiffs have failed to give any reason or explanation in not challenging the judgment and decree, much less no relief of declaration has been sought, obviously for the reasons, had such relief been sought would have been confronted with provisions of Article 56 of the Limitation Act, 1963, thus, there is no force in the plea that there is no limitation in law to claim title.

Keeping in view the aforementioned facts, the questions of law sought to be raised do not arise for determination by this Court. The findings rendered by both the courts below are affirmed.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

February 9th, 2016
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