

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

R.S.A No. 3611 of 2013 (O&M)

Date of decision : 06.04.2016

Malkiat Singh

..... Appellant

Versus

Jasbir Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Sandeep Jasuja, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred by the appellant-plaintiff against the judgment and decree dated 28.02.2013 passed by the learned Additional District Judge, Ferozepur, vide which the appeal filed by him against the judgment and decree dated 04.10.2010, passed by the learned Civil Judge (Jr. Division), Abohar, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Appellant-plaintiff has filed the suit for declaration to the effect that he he had defendants no.2 to 5 are owner in possession of 54 Kanals 15 Marlas of land as detailed and described in the head note of the plaint situated within the revenue estate of village Rai Pur, Tehsil Abohar, District Ferozepur and the judgment and decree dated 09.12.1987 passed in civil suit no. 420-1 of 07.08.1987 passed by the

then learned Sub Judge Ist Class, Fazilka, is illegal, null and void being based on fraud, misrepresentation and is ineffective upon the rights of the plaintiff as well as defendants no.2 to 5. He also challenged the sale deed bearing Vasika no. 4867 dated 24.01.2001 executed by defendant no.1 in favour of defendant no.6 and the subsequent mutation. He also sought a decree for permanent injunction restraining defendant no,1 and 6 from alienating the suit land measuring 20 Kanals 12 Marlas in any manner.

4. As per averments in the plaint, the plaintiff, defendant no.3 and deceased-Veer Singh are the sons. Defendant no.2 is the widow and defendants no. 4 and 5 are the daughter of late Harbax Singh. They constituted a joint Hindu Family, which possessed the land in suit, which was entered in the name of Harbax Singh being *Karta* of the joint Hindu Family. It is further pleaded that to the ignorance and in the absence of the plaintiff and defendants no.2 to 5, defendant no.1 in connivance with Veer Singh fraudulently and secretly by exercising the undue influence got the decree dated 09.12.1987 in their favour in order to deprive the plaintiff and defendants no. 2 to 5 of their share in the said property. Said Veer Singh had died issue-less. The plaintiff and defendants no.2 to 5 are his legal heirs. Harbax Singh has also died leaving behind the plaintiff and defendants no.2 to 5 as his legal heirs. No family settlement had taken place in the lifetime of deceased Harbax Singh. It is alleged that the impugned decree was obtained by defendant no.1 and deceased Veer Singh fraudulently by making wrong statement and misrepresentation of the facts. The plaintiff and defendants no.2 to 5 were necessary parties and they were not arrayed as party in that suit. Defendant no.1 had no

concern with the ownership or possession of the suit property. The impugned judgment is compulsory registrable and is violative of the provisions of the Registration Act, Stamp Act and Transfer of Property Act. It is further pleaded that defendant no.1 illegally sold the land measuring 10 Kanals 11 Marlas to defendant no.6 without consideration. Hence, the suit.

5. Defendants contested the suit by filing the separate written statements. Respondent-defendant no.1 Jasbir Singh contested the suit on the plea that he has become owner in possession of the suit property on the basis of the family settlement, which was admitted by deceased Harbax Singh and Veer Singh before the Court and they also suffered the statement in the Court on the basis thereof the decree in question was passed in his favour. He further pleaded that he has already sold the suit land and purchaser is owner in possession thereof. He further pleaded that plaintiff has admitted the decrees in the compromise dated 18.10.2001 and has obtained the sale deed of the land measuring 16 Marlas from him. All other pleas raised in the plaint were controverted.

6. Defendants no. 2 to 5 pleaded that they are the legal heirs of deceased Veer Singh, but they have been impleaded without any cause. They also prayed for dismissal of the suit.

7. Defendant no.6 pleaded that he has purchased the suit land measuring 10 Kanals 11 Marlas vide registered sale deed dated 24.1.2001 and is a *bonafide* purchaser. He also pleaded that the plaintiff is estopped by his own act and conduct from filing the suit as vide agreement dated 18.10.2001, the plaintiff-appellant has admitted the judgment and decree

dated 09.12.1987 as legal and binding and had undertaken to withdraw the suit. He also got the land measuring 16 Marlas from defendant no.1 vide registered sale deed dated 24.10.2001. With these pleas, the defendants pleaded for dismissal of the suit.

8. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 15.09.2003 :-

1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. Whether the judgment and decree dated 09.12.1987 in Civil Suit No. 420-1 dated 07.08.1987 is illegal, void *ab initio*, wrong having been passed on the basis of fraud and misrepresentation, if so its effect?OPP
3. Whether plaintiff is entitled for permanent injunction as prayed for?OPP
4. Whether the suit is within limitation?OPP
5. Whether the suit is not maintainable in the present form?OPD
6. Whether the sale deed bearing Wasika no. 4867 dated 41.01.2001 in favour of defendant no.6 is illegal, null and void, without consideration, if so its effect?OPP
7. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD
8. Whether the suit is bad for mis joinder and non joinder of the necessary parties?OPD
9. Whether plaintiff has no locus standi and cause of action to file the present suit?OPD
10. Whether suit is not properly valued for the purpose of court fee and jurisdiction?OPD
11. Whether the suit is liable to be dismissed with special costs?OPD
12. Relief.

9. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit filed by the appellant-plaintiff vide impugned judgment and decree dated 04.10.2010.

10. Aggrieved with the aforesaid judgment and decree dated 04.10.2010, the appellant-plaintiff has preferred the appeal and the same has also been dismissed by the learned Additional District Judge, Ferozepur, vide impugned judgment and decree dated 28.02.2013. Hence this Regular Second Appeal.

11. I have heard Mr.Sandeep Jasuja, Advocate, learned counsel for the appellant and have meticulously gone through the record of the case.

12. Initiating the arguments, learned counsel for the appellant contended that the suit property was the coparcenary property of the joint Hindu Family constituted by the plaintiff, defendant no.3, deceased-Veer Singh and defendant no.2 headed by their father Harbax Singh. He contended that Harbax Singh had no right to suffer the decree dated 09.12.1987 of the property of the joint Hindu Family in favour of defendant no.1-Jasbir Singh and deceased-Veer Singh. He contended that the impugned decree is illegal, null and void and ineffective on the rights of the plaintiff and defendants no.2 to 5. This decree has only been obtained to deprive of them of their right of inheritance.

13. He further contended that the impugned judgment and decree is the result of fraud, misrepresentation and undue influence. In fact, the person who had been shown to have suffered the decrees never appeared before the Court nor they filed any written statement admitting the claim. Thus, he contended that the impugned judgment and decree is illegal. He further contended that the sale deed dated 24.01.2001 executed by defendant no.1 in favour of defendant no.6 on the basis of impugned

decrees, is also illegal and is liable to be set aside being ineffective on the rights of the plaintiff. Thus, he contended that the learned Courts below have wrongly dismissed the claim of the plaintiff.

14. I have duly considered the aforesaid contentions.

15. Learned counsel for the appellant has assailed the impugned judgment and decree on two grounds. Firstly, that the suit property was the coparcenary property of the joint Hindu Family constituted by plaintiff, defendant no.3, deceased-Veer Singh, defendant no.2, headed by Harbax Singh, being the Karta and secondly that the impugned decree is based on fraud, misrepresentation and undue influence.

16. In order to succeed it was incumbent upon the plaintiff to establish that he constituted the joint Hindu Family with defendants no.2, 3, deceased-Veer Singh and Harbax Singh and the suit property was coparcenary property of the said joint Hindu Family. But, in my opinion, the plaintiff has not been able to establish that the suit property was ancestral/coparcenary property in the hands of Harbax Singh, his father. Rather, even from the admissions made by the plaintiff and his witness in the cross-examination, it comes out that the suit property was the absolute property of Harbax Singh, who had suffered the decree in favour of defendant no.1 and deceased-Veer Singh. The plaintiff has admitted in the cross-examination that the suit property was purchased by his father from Kewal Krishan Nagpal and he did not contribute any funds towards sale consideration when it was purchased by his father. Similarly, PW-1 Jagdev Singh has admitted in the cross-examination that the suit property was not the ancestral property of the plaintiff. Rather, it was purchased by

Harbax Singh, the father of plaintiff from *Baniyas* about 35-40 years ago. The aforesaid admissions of the plaintiff and his witness establish that Harbax Singh was the absolute owner of the joint Hindu Family by way of purchase. The plaintiff has also admitted in the cross-examination that he owns 6 acres of land, which was transferred to him by his father Harbax Singh by way of decree. This admission on his part shows that the plaintiff has also got 6 acres of land from his father Harbax Singh by way of consent decree. So, if he can obtain the land from his father Harbax Singh by way of consent decree, it does not lie in his mouth to challenge the impugned decree alleging that the suit property was ancestral and coparcenary property of Harbax Singh and he was not competent to transfer the same. Thus, the plea raised by learned counsel for the appellant that Harbax Singh, the father of the plaintiff was not competent to suffer the decree in favour of defendant no.1-Jasbir Singh and deceased-Veer Singh on the plea that the suit property was coparcenary property of the joint Hindu Family, carries no substance. Harbax Singh being absolute owner of the suit property was competent to alienate the same in any manner he likes.

17. The plea of fraud, misrepresentation and undue influence is not available to the present plaintiff-appellant. The decree dated 09.12.1987 in civil suit no. 420-1 of 07.08.1987 has been passed on the basis of the written statement filed by Harbax Singh and the statement made by him before the Court admitting the claim of defendant no.1-Jasbir Singh and deceased-Veer Singh, vide which Veer Singh was declared owner of the land measuring 34 Kanals 3 Marlas and Jasbir

Singh was declared owner in possession of the land measuring 20 Kanals 12 Marlas. There is nothing on record to show that said Jasbir Singh and Veer Singh had exercised any fraud, misrepresentation or undue influence to procure the said decree. From the evidence adduced by the contesting defendants, it comes out that the impugned decrees were passed after following the due procedure of law. Harbax Singh had remained alive for about 6 years after passing of the decree dated 09.12.1987. But, he had not challenged the said decree during his lifetime and has not alleged that any fraud was played with him or he was misrepresented the facts and any undue influence was exercised to procure the decree. Thus, the person who had suffered the decree had never raised any plea of fraud, misrepresentation and undue influence during his lifetime. The plaintiff, who was not party to the decree had no *locus standi* to challenge the decree on the grounds of fraud, misrepresentation or undue influence. Thus, the plaintiff has not been able to establish that the impugned judgment and decree suffered from any legal infirmity. Rather, the same is legal and valid.

18. Thus, I have no reason to differ with the well reasoned findings recorded by the learned Courts below, which do not warrant any interference by this Court in the Regular Second Appeal.

19. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

April 06, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**