

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

R.S.A No. 1478 of 2016 (O&M)

Date of decision : 04.04.2016

Rishi Raj and others

..... Appellants

Versus

Rajender and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Vikram Bali, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred by the appellant-defendant no.1 against the judgment and decree dated 24.12.2015 passed by the learned Additional District Judge, Gurgaon, vide which the appeal filed by him against the judgment and decree dated 31.01.2014, passed by the learned Civil Judge (Jr. Division), Gurgaon, has been dismissed.

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

3. Plaintiff-respondent no.1 Rajender has filed the suit for declaration to the effect that he and proforma defendants-respondents no.8 to 13 are co-owners in joint possession to the extent of $\frac{1}{4}$ share of the suit land measuring 11 Kanals 12 Marlas situated within revenue estate of Village Garhi Harsaru, Tehsil and District Gurgaon on the basis

of the civil Court decree dated 25.08.1999 and defendants no. 1 to 6 have no right, title, interest and concern to the suit land. Mutation no. 2401 dated 16.12.2005 sanctioned in favour of defendants no.1 to 6 and Jaipal Singh qua the land in dispute on account of death of Ram Richhpal is illegal, invalid, void, *ab-initio* and not binding on the rights of the plaintiff and the proforma defendants. In the consequential relief, he sought a decree for permanent injunction restraining defendants no.1 to 6 from alienating the suit land in any manner.

4. As per averments in the plaint, previously Ram Richhpal, the grandfather of the plaintiff and proforma defendants no. 9 to 13 and father-in-law of proforma defendant no.8 and father of defendants no. 1 to 6 was owner of the land in dispute. In the year 1998, in a family settlement, the mutual arrangement has taken place between the parties. The land in dispute was allotted to Jaipal Singh, the father of plaintiff and proforma defendants no. 9 to 13 and husband of defendant no.8. On the basis of which a Civil Court decree in Civil Suit No. 419 of 1998 titled as 'Jaipal Singh Vs. Ram Richhpal' was passed by the learned Civil Judge (Jr. Division), Gurgaon on 25.08.1999. In this way, Ram Richhpal was left with no right, title or interest in the suit land. Jaipal Singh died on 04.01.2001. After his death, the plaintiff and proforma defendants became co-owner in joint possession of the land in dispute being the legal heirs of deceased-Jaipal Singh. Ram Richhpal died on 01.05.2003. The impugned mutation no. 2401 dated 16.12.2005 was entered and sanctioned in favour of defendants no. 1 to 6 and deceased Jaipal Singh qua inheritance of said Ram Richhpal with respect to the land in dispute,

which is illegal as Ram Richhpal was not left with any right, title of interest qua the land in dispute. Hence, the suit.

5. Appellant-defendant no.1 contested the suit on the grounds *inter alia* that no family settlement and mutual arrangement had taken place between the parties. He and other defendants were not impleaded in the suit titled as 'Jaipal Singh Vs. Ram Richhpal'. His father never appeared in the Court nor engaged any counsel and he also did not make any statement nor filed the written statement in the Court. All the proceedings in that case were held by keeping the Court in dark.

6. Defendants no.2, 4 and 8 to 13 filed the written statements admitting the claim of the plaintiff.

7. Defendant no.7-State of Haryana contested the suit on the plea that the plaintiff or his father never came-forward to disclose the factum regarding the decree dated 25.08.1999 nor they ever approached them for sanctioning of any mutation. The mutation qua inheritance of Ram Richhpal was sanctioned on attestation by the Lambardar of the Village.

8. Plaintiff has filed the replication controverting the pleas raised in the written statement. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 07.12.2009:-

1. Whether the plaintiff and proforma defendants are co-owner in joint possession over the suit land, as alleged?OPP
2. Whether mutation no. 2401 dated 16.12.2005 is illegal and void as alleged?OPP
3. Whether the suit of the plaintiff is not maintainable?OPD

4. Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD
5. Whether the plaintiff has not come to Court with clean hands? OPD
6. Whether suit is liable to be dismissed under Order 7 Rule 11 of CPC?OPD
7. Whether the plaintiff is estopped from filing the present suit by his own act and conduct etc?OPD
8. Whether the suit is bad for non joinder and mis joinder of necessary parties?OPD
9. Relief.

9. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by the plaintiff-respondent no.1 for declaration to the effect that he and proforma defendants are co-owners in joint possession of the suit land on the basis of the Civil Court decree dated 25.08.1999. Defendant no.7-State of Haryana was directed to do the needful to correct the revenue record as per law. Defendants no1 to 6 were restrained from alienating the suit property on the basis of the revenue entries entered on the death of Ram Richhpal on the basis of inheritance.

10. Appellant-defendant no.1 preferred the appeal against the impugned judgment and decree dated 31.01.2014 passed by the learned trial Court and the same was dismissed by the learned Additional District Judge, Gurgaon vide impugned judgment and decree dated 24.12.2015. Hence this Regular Second Appeal.

11. I have heard Mr.Vikram Bali, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

12. Initiating the arguments, learned counsel for the appellant

contended that the Civil Court decree dated 25.08.1999 on the basis of which the suit has been filed by the plaintiff is illegal. He contended that in-fact, no family settlement has taken place in which the land in dispute might have been allotted to Jaipal Singh, the father of plaintiff. Appellant was not a party to the said decree. So, the decree is not binding upon him. He further contended that the decree dated 25.08.1999 is unregistered and it cannot be received in evidence. Thus, he contended that the mutation regarding inheritance of Ram Richhpal has been rightly sanctioned in favour of his legal heirs on the basis of natural succession. Thus, he pleaded that the learned Courts below have wrongly decree the suit.

13. I have duly considered the aforesaid contentions.

14. The plaintiff has filed the suit for declaration that he and proforma defendants are co-owners in possession of the suit land i.e. $\frac{1}{4}$ share of the land measuring 11 Kanals 12 Marlas situated within revenue estate of village Garhi Harsaru, Tehsil and District Gurgaon on the basis of civil Court decree dated 25.08.1999 in the civil suit titled as 'Jaipal Singh Vs. Ram Richhpal'.

15. In order to prove the decree, plaintiff has himself stepped into the witness box as PW-1, wherein he has fully supported the pleas raised in the plaint with respect to the allotment of the suit land by way of family settlement in favour of his father Jaipal Singh and passing of the civil Court decree dated 25.08.1999 suffered by Ram Richhpal, his grandfather in favour of his father Jaipal Singh. He has also brought on record the copy of judgment Ex.P-1, copy of the decree sheet Ex.P-2, death certificate of Ram Richhpal Ex.P-3 and copy of death certificate of

Jaipal Sharma as Ex.P-4.

16. There is no denial to the fact that Ram Richhpal, the grandfather of plaintiff and father of appellant was initially the owner in possession of the suit property. He has suffered the civil Court decree dated 25.08.1999 copy Ex.P-2 in favour of Jaipal Singh, the father of plaintiff and proforma defendants no. 9 to 13 and husband of proforma defendant no.8. Jaipal Singh was declared as exclusive owner in possession of the suit property by dint of a decree Ex.P-2. The evidence adduced by plaintiff has gone un-rebutted as the appellant-defendant no.1 though initially contested the suit, but later on he was proceeded against ex-parte vide order dated 27.07.2013 and he has not adduced any evidence in rebuttal to the evidence adduced by the plaintiff.

17. It is also not disputed that the appellant-defendant had never challenged the civil Court decree dated 25.08.1999 prior to the present suit. Even, in the present suit he has not filed any counter claim for setting aside the civil Court decree dated 25.08.1999. The pleadings put-forward by him in the written statement are only as a defence to the mutation of inheritance sanctioned in their favour on the death of Ram Richhpal. There is no dispute with the proposition of law that the consent decree is as good as the decree based on contest unless the same is set aside by the Competent Court of law. The contentions raised by learned counsel for the appellant that the decree dated 25.08.1999 was not based on any family settlement are without any foundation. It is settled principle of law that the pleadings cannot take the place of proof. In order to prove the pleas raised in the pleadings, a party has to adduce the cogent and

convincing evidence. But, in the instant case, appellant has not adduced any evidence to prove the pleas raised in the written statement to assail the decree. The decree dated 25.08.1999 cannot be ignored simply on the ground that the appellant was not party to the decree, because the decree has been suffered by Ram Richhpal, the owner of the property and during his lifetime, he has not assailed the decree. So, he has transferred the suit property by way of Civil Court decree dated 25.08.1999 copy Ex.P-2 in favour of Jaipal Singh, the predecessor-in-interest of the plaintiff and proforma defendants.

18. There is no material on record to show that said Ram Richhpal was not competent to suffer the decree. No evidence has been adduced by the appellant to show that the land in dispute was coparcenary and ancestral property in the hands of Ram Richhpal. Thus, with the passing of the decree dated 25.8.1999, Ram Richhpal was left with no right, title or interest in the suit property, as it was already transferred by him in his lifetime to Jaipal Singh, the predecessor-in-interest of the plaintiff and proforma defendants. Thus, certainly, the suit property could not have devolve upon the appellant and his co-defendants by way of inheritance. Therefore, the mutation no. 2401 dated 16.12.2005 sanctioned with respect to the inheritance of Ram Richhpal qua the suit property is illegal and not binding on the rights of the plaintiff and proforma defendants, who have become the joint owners in possession of the suit property on the death of Jaipal Singh on 04.01.2001 being his legal heirs.

19. Thus, I have no reason to differ with the concurrent findings

recorded by the learned Courts below, which do not call for any interference by this Court.

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

April 04, 2016

s.khan

(DARSHAN SINGH)
JUDGE