

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.M. Nos. 6797-99-C of 2016 and
RSA No. 2553 of 2016 (O&M)

Date of decision: May 20, 2016

Ajaib Singh and others

...APPELLANTS

Versus

Baldev Singh and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Hamid Hussan, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 6797-C of 2016

C.M. is allowed subject to just exceptions. Filing of certified copies of judgment and decree dated 08.05.2015 is dispensed with.

C.M. No. 6798-C of 2016

Prayer in this application is for permission to lead additional evidence in the present appeal and for producing the voter list for the year 1995.

The reason mentioned for non-production of the said documents before the Courts below was that the same were not to the knowledge of the applicant/appellants and they have received the same on 02.07.2014. The reason, as has been assigned for permission to lead

additional evidence in the present appeal, cannot be accepted as it has neither been pleaded nor is it established that the said document could not be produced by the appellants at the time when the evidence was being led by them. In any case, an application moved by the appellants for leading additional evidence was filed before the First Appellate Court for the same purpose as the present one, relying upon the same document, which had been duly considered by the First Appellate Court and dismissed by observing that the applicant/appellants have failed to show as to how the evidence, which is now being sought to be produced, was not available with them at the time when they were leading their evidence before the trial Court despite due diligence. The intention is to fill up the lacuna left out in the evidence which cannot be permitted at this belated stage. Further, no reason has been assigned as to why the said document/evidence could not be produced before the trial Court.

In view of the above, the present application deserves dismissal.

Ordered accordingly.

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division) Naraingarh dated 08.05.2014, whereby the suit for declaration to the effect that the judgment dated 10.02.1995 passed by the the Court of Sh. Ashok Bhardwaj, the then Sub-Judge Ist Class, Ambala in Civil Suit No. 25 of 1995 pertaining the land measuring 72 Kanals 13 Marlas, as detailed in the head note, situated in Village Dehri, H.B. No. 47, Tehsil Naraingarh, District Ambala as per Jamabandi for the year 1989-90 and 2004-05 is null and void and not

binding on the rights of the appellants-plaintiffs and that they are owners of the same with consequential relief of possession of the suit land, stands dismissed, appeal against which preferred has also been dismissed by the Additional District Judge, Ambala on 11.02.2015.

2. It is the contention of the learned counsel for the appellants that the judgments and decree, as passed by the Courts below, cannot sustain as the same are based upon misreading of evidence. He submits that the decree dated 10.02.1995 was obtained by the respondents by producing an impostor in the Court in place of Karti and obtained her thumb impressions. Further, the pleadings themselves indicate in the said suit that the respondents herein, who had filed the said suit, had projected themselves as grandchildren of Karti but in the present suit, they have asserted that Karti was their paternal aunt. She had no relation with the respondents rather Karti was the sister of the father of the appellants. He contends that originally the suit land belonged to Palu Ram son of Telu, who was the absolute owner of the property, who died issueless in the year 1993 leaving behind Smt. Karti, his widow. Karti became the absolute owner of the property after the death of Palu Ram as she inherited the property. The mutation of inheritance was also sanctioned in her name. It is at this stage, when she was all alone, that a decree by fraud and misrepresentation qua the property of Karti was obtained from the Court of Sub-Judge, Ist Class, Ambala on 10.02.1995, which fact was not known to anyone including Karti herself as an impostor had appeared in Court in her place. Karti died intestate on 22.05.2001 and was issueless. Counsel, thus, submits that the appellants-plaintiffs being related to Karti were entitled to inherit the suit property and the judgments and decree, through which the respondents-

defendants have attained title, cannot sustain. His further submission is that the entire process of filing of the suit, filing of the written statement, appearance before the Court and the passing of the decree is on one date itself i.e. 10.02.1995, which further indicates that it was a collusive decree which has not been registered, therefore, conferring no title upon the respondents-defendants. That apart, he contends that the respondents-defendants have not approached the Court with clean hands and, therefore not entitled to any benefit of the judgment and decree dated 10.02.1995.

3. I have considered the submissions made by the learned counsel for the appellants and with his able assistance, have gone through the impugned judgments but do not find force in any of the contentions, as raised by the counsel.

4. A categorical finding has been returned by the Courts below on the basis of the pleadings and the evidence brought on record that the decree dated 10.02.1995 was not based upon the family settlement, as has been asserted by the appellants-plaintiffs, but the suit was filed claiming declaration of ownership on the basis of adverse possession, which fact was admitted by Karti in the Court by filing written statement and making statement on putting her appearance. It can, therefore, not be said that the decree was based upon the family settlement. In any case, the decrees, which have been passed prior to the year 1996, did not require registration.

5. As regards the contention of the counsel for the appellants that the judgment and decree dated 10.02.1995 is a result of fraud and misrepresentation qua the property of Karti by producing someone else in place of Karti, who was impostor and had thumb marked the written statement and had presented herself in the Court cannot be accepted as no

evidence has been brought on record which would substantiate such assertion especially when PW-1 Ajaib Singh, who had put in appearance as a witness and was being cross-examined, admitted that Karti used to put her thumb impressions on the documents, some of which were in his possession. Despite that, the appellants failed to produce any such document in Court or to prove that the thumb impressions of Karti on the documents and the one affixed by her in the Court in Civil Suit No. 25 of 1995 were not hers. No expert evidence has been led by the appellants to rebut the evidence, as has been led by the respondents through an expert. Further, the conduct of the appellants also do not indicate that they are related to Karti as they were not even present at the time of her last rites. Ajaib Singh PW-1, in his cross-examination, has stated that he has visited Karti about 4-5 years prior to the date of his cross-examination, which, according to the Appellate Court, comes to the year 2008 whereas Karti has already died in the year 2001. He was not even aware that who was in possession of the suit land at the spot and neither had they ever enquired from any person about the possession at the spot, which clearly shows that there was either no relationship between the appellants and Karti or they were not on visiting terms with each other.

6. Another aspect, which requires to be noted here, is that the decree is dated 10.02.1995 and admittedly, Karti died in the year 2001. During these six years when she was alive, she had not challenged the judgment and decree passed by the Court nor had she questioned the same. In any case, the present suit has been instituted on 26.09.2007, which is after a period of seven years from the death of Karti and, therefore, the suit is clearly barred by limitation as the period to challenge a consent decree is

three years and a suit beyond that period would be barred by limitation.

7. The findings, as recorded by the Courts below being on due and proper consideration of the pleadings and the evidence brought on record cannot be faulted with or can not be said to be, in any manner, illegal which would call for interference by this Court.

8. No other point has been raised or argued by the counsel for the appellants.

9. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

10. There is no substantial question of law in the present appeal, which requires consideration of this Court.

11. In view of the above, finding no merit in the present appeal, the same stands dismissed.

C.M. No. 6799-C of 2016

In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

May 20, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE