

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

**CM No.6061-C-2015 in/and
RSA No.2323 of 2015 (O&M)
Date of decision : 24.08.2016**

Leela Krishan and another

.....Appellants

Versus

Narayan Dass and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. T.C. Dhanwal, Advocate for applicants-appellants.

DARSHAN SINGH, J.

The present regular second appeal has been preferred against the judgment and decree dated 19.07.2013 passed by the learned Additional District Judge, Fatehabad, whereby the appeal filed by the appellants-plaintiffs against the judgment and decree dated 31.05.2010 passed by the then learned Additional Civil Judge (Senior Division), Tohana has been dismissed.

2. The appellants-plaintiffs have brought the suit for declaration by way of possession to the effect that they are owners of the land measuring 08 Kanals 04 Marlas being 1/6th share of the total land measuring 49 Kanals 06 Marlas situated in village Saniyana, Tehsil Tohana, Distt. Fatehabad. They further sought a declaration that the judgment and decree dated 14.06.1989, passed in civil suit titled as Narain Dass etc. Vs. Kaushalya Devi etc. by the Court of learned Sub Judge IInd Class, Tohana

and the subsequent revenue entries are the result of fraud and misrepresentation and as such are liable to be set aside. The appellants-plaintiffs also sought the relief for permanent injunction restraining the defendants-respondents from alienating and mortgaging the suit land.

3. As per the averment of the plaint, the plaintiffs are the legal heirs of deceased Smt. Kaushalya Devi. Defendants are their maternal uncles. Their maternal grandfather Ghanu Ram, the father of their mother Smt. Kaushalya Devi has died on 13.01.1981 intestate. After his death, his entire estate was inherited by his legal heirs. The mutation of inheritance No.3104 dated 19.03.1981 was entered and sanctioned. The mother of the plaintiffs became the owner in possession of the land measuring 08 Kanals 04 Marlas being 1/6th share of total land measuring 49 Kanals 06 Marlas. The decree dated 14.06.1989 passed in civil suit titled as Narain Dass etc. Vs. Kaushalya Devi etc. is the result of impersonation. The same is illegal, null and void as their mother had neither appeared in the said civil suit nor suffered any statement. Thus, the said decree and consequent mutation No.3505 are liable to be set aside. Hence, the suit.

4. Proforma respondent No.3 Roop Chand was proceeded against *ex parte* by the learned trial Court vide order dated 28.01.2009. The suit was contested by the remaining respondents-defendants. Written statement filed by respondent-defendant No.2 was adopted by respondents-defendants No.1, 4 and 5. They contested the suit on the

grounds *inter alia* that Smt. Kaushalya Devi, the mother of the plaintiffs along with her sisters namely Smt. Savitri Devi and Shanti Devi had herself appeared in the Court and got recorded their statements and thereafter, got affixed her thumb impressions. She had never challenged the decree during her life time. They pleaded that the impugned judgment and decree is quite legal, correct and genuine. With these pleas, they pleaded for dismissal of the suit.

5. From the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are owner in possession of the disputed property? OPP
2. Whether the judgment and decree dated 14.06.1989 titled as Narain Dass Vs. Kaushalya Devi etc. passed by Shri S.P. Sharma, the then Sub Judge IInd Class, is liable to be set aside? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiffs have got no cause of action and locus standi to file the present suit? OPD
5. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
6. Whether the Civil Court has got no jurisdiction to try and entertain the present suit? OPD
7. Whether the plaintiffs have concealed the true and material facts from the Court? OPD
8. Whether the plaintiff has not affixed the ad valorem court fees? OPD
9. Relief.

6. On appreciating the evidence adduced by the parties and contentions raised by their counsel, the learned trial Court dismissed the

suit vide impugned judgment and decree dated 31.05.2010.

7. Aggrieved with the aforesaid judgment and decree, they preferred the appeal which was also dismissed by the learned Additional District Judge, Fatehabad vide impugned judgment and decree dated 19.07.2013. Hence, this regular second appeal.

8. Along with the appeal the appellants-plaintiffs have also filed an application bearing CM No.6061 of 2015 under Section 5 of the Limitation Act for condonation of delay of 579 days in filing the present appeal.

9. I have heard learned counsel for the appellants and gone through the record of the case carefully.

10. Learned counsel for the applicants-appellants contended that the delay of 579 days in filing the present appeal has occurred as when the appellant contacted his counsel at Chandigarh, he required certain documents. The said documents were sent by the counsel of the appellants at Fatehabad at his Chandigarh address but by that time, he has already shifted to Dera Bassi. The appellant contacted him on 17.05.2015 to enquire about the status of the appeal but he told that the appeal could not be filed as he has not received the documents. Thereafter, the appellants contacted their counsel at Fatehabad, who told that the documents were already sent at the Chandigarh address of the counsel. Thereafter, the counsel for the appellants enquired about the said documents at his old address and were found in the neighbour's house.

Thus, he contended that the appellants were not at fault for delay in filing the appeal. So, it should be condoned.

11. Learned counsel for the appellants further contended that the appellants have good case on merits. It is an admitted fact that their mother was the owner of the suit property which she had inherited from her father Ghanu Ram on his death. Their mother had never appeared in civil suit titled as Narain Dass and another Vs. Kaushalya Devi and others. She did not file any admission written statement nor appeared in the Court to suffer the statement admitting the claim of respondents No.1 & 2 in that suit. He contended that some other lady had been produced in place of mother of the appellants. Thus, he contended that the impugned decree dated 14.06.1989 has been procured by impersonation. He contended that the written statement alleged to be filed in civil suit titled as Narain Dass and another Vs. Kaushalya Devi and others has been typed on 12.06.1989, whereas the suit itself has been filed on 13.06.1989. It is not possible that the written statement would have been typed even before the filing of the suit. It shows the fraud.

12. He further contended that the plaintiffs also examined PW-4 Shri V.B. Bhatnagar, Handwriting and Finger Prints Expert. He has examined the disputed thumb impressions on the written statement and the statements recorded in the Court and has given a definite opinion that the disputed thumb impressions do not tally with the sample thumb impressions of deceased Smt. Kaushalya Devi, which clinches the matter

that some other lady had impersonated in place of Smt. Kaushalya Devi, the mother of the appellants. Thus, he contended that the impugned decree is illegal, null and void and is liable to be set aside. The consequent mutation and revenue entries are also illegal and liable to be set aside.

13. I have duly considered the aforesaid contentions.

14. There is long delay of 579 days in filing the appeal. The appellants were required to show “sufficient cause” for seeking condonation of this long delay. There is no dispute with the proposition of law that there should be liberal approach to condone the delay. The expression “sufficient cause” should be given a liberal interpretation to ensure the substantial cause of justice. But this proposition is only applicable in the cases where negligence, inaction or lack of *bona fide* cannot be imputed to the party concerned. The Hon’ble Supreme Court in case ***Basawaraj and another Vs. Special Land Acquisition Officer 2014(1) RCR (Civil) 603***, has laid down that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provisions may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The maxim “*dura lex sed lex*”, which means “*the law is hard but it is the law*” would be attract in such a situation.

15. The sufficient cause is the cause for which the party could not be blamed. The meaning of word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. The party concerned should not have acted in a negligent manner or there should not be want of *bona fide* on his part. The applicant must satisfy the Court that he was prevented by any “sufficient cause” from prosecuting his case and unless a satisfactory explanation is furnished the Court should not allow the application for condonation of delay.

16. In the instant case, the sufficient cause pleaded by the appellants for condonation of delay just seems to be camouflage to cover their inaction and negligence. The appeal filed by the appellants has been dismissed by the learned Additional District Judge, Fatehabad on 19.07.2013. The certified copy of the judgment shows that the application to obtain the certified copy was moved on 22.07.2013. The same was prepared on 24.07.2013 and was delivered to the applicant on 26.07.2013. The applicants-appellants have also obtained the certified copies of the judgment and decree passed by the learned trial Court on the same day along with certified copy of the grounds of appeal filed in the first appellate Court. So, all these documents were obtained by the appellants on 26.07.2013. Thus, all these documents were already in the possession of the appellant and it is not believable that he will contact his counsel at Chandigarh without the requisite documents. No document has been brought on record to show as to at what address his counsel was

residing at Chandigarh and when he shifted to Dera Bassi. The particulars of the neighbourer from whose house the documents were collected are also not mentioned. As per the averments in the application after sending the documents on 13.10.2013, the appellant only met her counsel at Chandigarh on 17.05.2015 *i.e.* after more than one year and six months, which is not expected from a prudent and vigilant litigant. It shows the total inaction and negligence on the part of the appellants. It is also not mentioned that in what mode the papers were sent by their counsel at Fatehabad to their counsel at Chandigarh. No address at which the said documents were sent is mentioned. The counsel at Fatehabad must have sent these documents in some envelop. No such envelop is enclosed with the application. Thus, it appears that grounds pleaded to condone the inordinate delay of 579 days in filing the present appeal are just a concoction of facts, vague and indefinite. Consequently, the appellants have not been able to establish the “sufficient cause” to condone such a long delay. Therefore the application of the appellants for condonation of delay is without any merit and the same is hereby dismissed.

17. Learned counsel for the appellants has also addressed the arguments on the merits of the case. Even on merits, the appellants have no case. Learned both the courts below have returned a concurrent finding of facts that the plea of impersonation raised by the appellants was not established. It is an admitted fact that the land in dispute was inherited by their mother Smt. Kaushalya Devi from her father and the

impugned judgment and decree dated 14.06.1989 has been suffered by her in favour of her two brothers namely Narain Dass and Baldev Raj. Smt. Kaushalya Devi, the mother of the appellants has died on 31.12.2007 *i.e.* after more than 18 years from the date of passing of the impugned decree dated 14.06.1989. The appellant-plaintiff Leela Krishan while appearing in the witness-box as PW-1 has categorically admitted in the cross-examination that his mother had never challenged the said decree and mutation during her lifetime. It is not believable that his mother could not have acquired the knowledge about passing of the impugned decree and sanctioning of the mutation No.3505 in a long span of 18 years.

18. Learned counsel for the appellants has vehemently contended that the written statement, certified copy of which is Ex.P4, filed in the civil suit titled Narain Dass etc. Vs. Kaushalya Devi etc. was typed on 12.06.1989, whereas the suit was filed on 13.06.1989. The date typed on the written statement may be a typographical mistake which might have escaped the notice of the counsel who has got drafted the said written statement. Due to this sole mistake in the date the judicial proceedings, which are presumed to have been regularly performed as per Section 114, illustration (e), of the Indian Evidence Act, 1872 (for short the "Evidence Act") cannot be doubted.

19. Both the parties have examined the handwriting experts, who have given the reports in favour of their pay masters. The learned

first appellate Court has discussed both the reports given by the handwriting experts of both the parties and finally observed that as both the parties have examined their respective experts giving contradictory reports, so no much reliance can be placed on the experts report as the experts used to toe the line of their pay masters. No fault can be found with these observations of the learned first appellate Court. Moreover, it is settled principle of law that before placing reliance on the report of the expert, the specimen/standard thumb impressions or signatures must be established to have been affixed/signed by the person concerned. In the instant case, both the experts have compared the disputed thumb impressions with standard thumb impression Mark S-1 available in the pension record. The other standard thumb impressions S-2 to S-5 available in the ration card record were not fit for comparison. Standard thumb impression S-1 has been brought on record by examining PW-2 Madan Lal Assistant, Office of the District Social Welfare Officer, Fatehabad. In the cross-examination he has categorically admitted that this thumb impression was not affixed in his presence, rather the same was obtained by the officials of the Municipal Committee, Tohana. He further stated that he does not know Smt. Kaushalya Devi personally. So, the standard thumb impression S-1 was neither affixed in the presence of PW-2 Madan Lal, nor he is personally known to Smt. Kaushalya Devi. The officials of Municipal Committee who had obtained the thumb impression of Smt. Kaushalya Devi in pension record has not been

examined. Similar is the position with respect to the standard thumb impression S-2 to S-4 available in the ration card record. PW-3 Swarn Singh Inspector, Food Supply, Tohana, who had proved these thumb impressions has also admitted in the cross-examination that those thumb impressions were not affixed in his presence, nor he knew Smt. Kaushalya Devi. He further stated that Smt. Kaushalya Devi was identified by a Municipal Commissioner but said Municipal Commissioner has not been examined. Thus, the standard thumb impression which has been compared with the disputed thumb impression is not proved to have been affixed by Smt. Kaushalya Devi deceased. So, these reports of the fingerprint experts carry no evidentiary value.

20. Then there remains the oral evidence. Plaintiff Leela Krishan has appeared in the witness-box as PW-1 and he has *inter alia* supported the plea raised in the plaint. But admittedly he could not have personal knowledge about the affairs leading to the passing of the impugned decree as he was not a party to that suit. The statement of PW-5 Roop Chand, proforma respondent No.3, also carries no evidentiary value because he is an interested witness being the third brother of Smt.Kaushalya Devi, who has been excluded from the impugned decree. Smt. Kaushalya Devi and her sisters Smt. Savitri Devi and Smt. Shanti Devi have suffered the decree in favour of their brothers Narain Dass and Baldev Raj respondents No.1 and 2 by ignoring PW-5 Roop Chand. So, certainly he will support the cause of the plaintiffs as he would be

beneficiary if the impugned decree is set aside.

21. On the other hand, the respondents-defendants have examined Smt. Shanti Devi, sister of Smt. Kaushalya Devi as DW-1. Her statement carries great evidentiary value as she was also impleaded as defendant No.3 in civil suit No.787/13.6.1989 titled as Narain Dass and another Vs. Smt. Kaushalya Devi and others, which culminated in passing of impugned decree dated 14.06.1989. She has categorically deposed that defendants No.1 & 2 have filed the civil suit No.787 of 1989 titled as Narain Dass etc. Vs. Kaushalya Devi etc. in Civil Court, Tohana. In that case, she and both her sisters namely Savitri Devi and Kaushalya Devi have transferred the land in favour of defendants No.1 & 2 on the basis of family settlement. She further deposed that in that suit, they had filed the admission written statement in the Court, which was read over to them. She and Savitri Devi put their signatures and Kaushalya Devi affixed her thumb impression. She further deposed that on 13.06.1989 the statements of all the three sisters *i.e.* of her and that of Kaushalya Devi and Savitri were recorded in the presence of the Judge. The said statement was made by them voluntarily and with their free will on the basis of the family settlement. Thus, DW-1 Smt. Shanti Devi who had also suffered the impugned decree dated 14.06.1989 is the best witness to depose that it was Kaushalya Devi, the mother of the appellants, who had thumb marked the admission written statement and also suffered the statement in the Court on the basis of which the impugned judgment and

decree dated 14.06.1989 was passed. Smt. Shanti Devi has no adverse interest to depose against the appellants. She is sister of their mother and is not going to have any benefit by making this statement to certify the genuineness of the decree dated 14.06.1989. So, there is no escape from the conclusion that Kaushalya Devi, the mother of the appellants, had thumb marked the admission written statement filed in civil suit No.787 of 1989. She also suffered the statements in the Court on the basis of which the impugned decree dated 14.06.1989 has been passed.

22. As per Sections 101 and 102 of the Evidence Act, the burden to establish that the decree dated 14.06.1989 was procured by way of impersonation was upon the appellants-plaintiffs. But in view of the aforesaid discussion, they have failed to establish their plea of impersonation.

23. Consequently, the impugned decree dated 14.6.1989 does not suffer from any illegality. The same is legal and valid.

24. Resultantly, I have no reason to differ with the concurrent findings recorded by the learned courts below. Therefore, the present appeal, having no merits, is hereby dismissed on merits as well being time barred.

24.08.2016
sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No