

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3701 of 2015(O&M)

Date of decision : February 17th, 2016

Prem Singh and others

..... Appellants

Versus

Gurdev Singh and others

..... Respondents

RSA No. 3702 of 2015

Surjit Kaur (since deceased) through L.Rs and others

..... Appellants

Versus

Gurdev Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:-

Mr. Arun Jain, Senior Advocate with
Mr. P. C. Chaudhary, Advocate and
Mr. Arjun Veer Sharma, Advocate
for the appellants.

Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, 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.

CM No.9100-C of 2015 in RSA No.3701 of 2015 & CM No.9104-C of 2015 in RSA No. 3702 of 2015

These are applications under Section 151 CPC seeking condonation of delay in refiling the appeals.

For the reasons stated in the applications, which are duly supported by an affidavit, delay of 43 days in refiling the appeals is condoned.

The applications stand disposed of.

CM No.9101-C of 2015 in RSA No.3701 of 2015

This is an application under Rule 3 of Chapter 1 Part C of Vol.V of High Court Rules & Order for grant of leave to sue defendant Smt.Surjit Kaur (since deceased) through the legal representatives of, who is stated to have died on 23.1.2013, and her representatives are already on record being parties to the appeal in their respective individual capacities as respondent Nos. 3 to 7, duly supported by an affidavit. The legal representatives of Smt. Surjit Kaur are permitted to be brought on record as mentioned in the application subject to all just exceptions.

Registry is directed to make necessary correction in the Memo of Parties.

The application is disposed of.

RSA No. 3701 and 3702 of 2015(O&M)

There are instances where people are not satisfied with one round of litigation and under the cloud of greed motives indulge into prolonged litigation. The instant cases are cases of such kind.

The appellants-plaintiffs are successor-in-interest of Baldev Singh in one case in RSA No. 3702 of 2015 and in RSA No. 3701 of 2015 Prem Singh son of Ratti Ram filed the suit claiming joint possession to the extent of 1/24th share each in respect of land measuring 17 Kanals 11 Marlas and as well as for setting aside of the judgment and decree dated 20.4.1989 passed in Civil suit No.133 of 16.3.1989 and 11.2.1994 passed in Civil suit No. 338 of 1992 qua

the suit land only and as well as judgment and decree dated 6.10.1998 and order dated 29.3.2003 passed in Misc.Appeal No.100 of 27.11.1998 of Sh.A.S. Kathuria, Additional District Judge being null and void by way of declaration with consequential relief of permanent injunction restraining defendant No.1 from selling, alternating and encumbering the suit property in any manner. In essence, the suit Surjit Kaur widow of Baldev Singh son of Rati Ram Vs. Gurdev Singh was filed at the instance of widow, sons and daughters of Baldev Singh. This suit has been consolidated with the suit titled Prem Singh etc. Vs. Gurdev Singh etc. vide order dated 8.11.2005.

It would be apt to give preface of the matter.

Rati Ram was having four sons namely Prem Singh, Mewa Ram Baldev Singh and Gurdev Singh. The plaintiff had challenged the aforementioned consent decree dated 20.4.1989 executed by Ratti Ram in favour of Gurdev Singh on the ground that they constituted joint Hindu family property, much less property at the hands of Ratti was ancestral, therefore, he could not have bequeathed/transferred the property by way of decree or Will in favour of his son Gurdev Singh.

The defendants contested the suit that Baldev Singh had been residing with Ratti Ram and pleased with his services executed registered Will dated 21.11.1989. Mangal Singh father of Ratti Ram pre-deceased Bhola. After the death of Bhola his occupancy rights were inherited by Ratti Ram, thus, it was denied that the estate succeeded by Ratti Ram was ancestral, joint and coparcenary property but it was a self acquired property. On 20.4.1989

Ratti Ram suffered a decree on his own accord and gave land measuring 8 Kanals 12 Marlas comprising Khasra No.51//2//3 (1-15), 21/4(2-11), 52//1/1(4-4), 138/69(0-2) situated in village Bhabat to defendant No.1 and the decree was passed in Civil No. 133 dated 16.3.1989 and Gurdev Singh was declared owner in possession of the land. The aforementioned judgment and decree dated 20.4.1989 was challenged vide civil suit No. 338 of 19.7.1989/23.9.1992 but the same was dismissed and it was held that property at the hands of Ratti Ram was self acquired property except the residential house. The said judgment and decree was challenged. During the pendency of the appeal, Baldev Singh expired and the counsel engaged by Baldev Singh was looking after the proceedings of the appeal on behalf of Mewa Singh and Prem Singh. The aforementioned appeal was withdrawn. The withdrawal was on the basis of compromise and thereafter an application for recalling of the said compromise was moved but the same was dismissed and against the aforementioned dismissal, a Civil Revision No. 5724 of 2003, Ex. P-55, was filed and the same was also dismissed as withdrawn with liberty to seek such other remedies which are available to them, in accordance with law.

Mr. Arun Jain, learned Senior counsel assisted by Mr. P. C. Chaudhary, Advocate and Mr. Arjun Veer Sharma, Advocate submits that both the courts below have committed illegality and perversity in dismissing the suit holding it to be barred by doctrine akin to res judicata and failed to address other issues which was not permissible in law. Even the documentary evidence viz-a-viz not appreciating the decree suffered by Rati Ram in favour of Gurdev

Singh was not sustainable and rightly so, the same was challenged. Though the said decree was upheld vide judgment and decree dated 11.2.1994 but the appeal filed thereto was withdrawn without any instructions. The appellants were not impleaded in the previous suit and the previous suit i.e. judgment and decree dated 11.2.1994, issue No.1 was decided in favour of the plaintiffs therein that they constituted joint Hindu Family property, therefore, the courts below ought not to have dismissed the suit on the ground of maintainability. The permission granted in aforementioned Civil Revision No. 5724 of 2003, has totally been ignored by the courts below. In this regard, order dated 5.2.2003 passed by this Court in the aforementioned Civil revision was referred which reads thus:-

“Present: Sh. R. K. Battas, Advocate for the petitioners.

The learned counsel for the petitioners wishes to withdraw the present petition with a liberty to the petitioners to seek such other remedies which are available to them in accordance with law.

Dismissed as withdrawn with liberty as aforesaid.

December 05,2003

*Sd/-Viney Mittal,
Judge”*

The appellants, in their respective independent individual legal rights in suit property filed the suit No. 1203 of 23.12.2003, similarly defendant Nos. 2 to 4 filed another suit bearing No.164 of 4.12.2004. The controversy was not identical and similar, therefore, principle of res judicata does not apply. The appellants were never heard on merits of the case in the previous litigation. The courts below have lost sight of the fact that the suit was liable to be

decided in its entirety and not on technical grounds. Even, the case law cited at bar have not been appreciated. The previous judgment and decree obtained by Gurdev Singh was on account of misrepresentation and fraud, thus, prays that substantial question of law arise for determination by this Court as both the judgments and decrees of the courts below suffer from illegality and perversity.

Notice of motion was issued. Mr. Kulwant Singh had accepted the notice on behalf of Mr. Ashish Aggarwal, Senior Advocate. Mr. Aggarwal rendered assistance to the Court by referring Ex.P-43, P-44, P-45, P-49, P-54 and P-55. Details of which are hereunder: (1) Ex.43 is judgment dated 11.2.1994, (2) Ex.P-44 is decree sheet, (3) Ex.P-45 is copy of order dated 6.10.1998 whereby appeals filed by Prem Singh, Mewa Singh and Gurdev Singh were withdrawn, (4) Ex. P-49 is copy of judgment dated 20.4.1989, (5) Ex. P-54 is copy of judgment dated 29.3.2003 and (6) Ex.P-55 is copy of order dated 5.12.2003 and submits that in the judgment and decree dated 11.2.1994 following issues were framed:-

“1. Whether the plaintiffs and defendants constituted joint Hindu Coparcenary family?OPP

2. Whether suit property is joint Hindu coparcenary family property?OPP

3. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction?OPD

4. Whether the suit is not maintainable in the present form?OPD

5. Relief.”

4-A Whether the impugned sale deed dated 10.5.1988 by defendant No.2 in favour of defendant No.1 is illegal, null and void, not affecting the rights of plaintiffs?OPP

4-B Whether the suit is time barred?OPD”

The trial court rendered finding on issue No.1 in favour of the plaintiffs (appellants herein) and other issues were decided against them. In this regard, he has referred to the judgment in Civil Suit No.338 of 19.7.1989/23.9.1992 which is reproduced hereinbelow:-

“Therefore, in view of discussion supra, I conclude that the plaintiff and defendants constitute a joint Hindu family. As such, issue No.1 is decided in favour of the plaintiffs and against the defendants.

Further more issue No.2 is adjudged holding that the suit land fully described in the head note of the plaint is not joint Hindu family coparcenary property whereas the residential house situated in village Bhabat fully described in the head note of the plaint is a joint Hindu family Coparcenary property in which the plaintiffs and defendants have got equal shares i.e. 1/5th share each. Therefore, issue No.2 is decided accordingly.”

The appeals were withdrawn without any contest. The liberty granted by this Court was not for filing of the suit, rightly so, the courts below have dismissed the suit holding that the suits were barred by res judicata and in this regard has referred to the judgments in **Harpal and others Vs. Ram Piari and others 1981 PLJ 492** to contend that as per provisions of Order 23 Rule 3 CPC consent decree being collusive and fraudulent cannot be declared null and void as same based on plea which was factually wrong and court in second suit cannot go behind earlier decree and find out as to whether passed on right or wrong facts. The Division Bench

judgment of this Court in **Gurdev Kaur and another Vs. Mehar Singh and others 1989 PLJ 182** to contend that as per provisions of Order 6 Rule 4 CPC compromise decree can be set aside if it was obtained by fraud, misrepresentation or correction. In the judgment in **Ranganayakamma and another Vs. K. S. Prakash (D)by L.Rs and others 2008 (3) RCR (civil) 601** it has been held that compromise decree on the premise, that said compromise was lawful the same cannot be permitted to be reopened only on the question as to whether the properties were joint properties or self acquired property, for, in the subsequent suit it was not even pleaded that the compromise was against public policy or against the interest of the family, rather finding, are except residential house, another property was self acquired property of Ratti Ram. **In Satpal Singh Vs. Harminder Kaur 1992 PLJ 164** it has been held that where a person has been allotted land under the provisions of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 land allotted as occupancy tenants in lieu of land left in Pakistan and proprietary rights acquired under Section 10, Displaced persons (Compensation and Rehabilitation) Act, land becomes self acquired property and cannot be treated as ancestral and can be given in Will by the successor-in-interest, therefore, the property at the hands of Ratti Ram was not ancestral.

I have heard learned counsel for the parties, appraised the paper book and the case law cited at bar.

The suits have rightly been held to be barred by principles akin res judicata in view of the judgment and decree dated

11.2.1994, wherein, it was held that the property at the hands of Ratti Ram was not joint Hindu Family, much less ancestral and therefore, in the second round of litigation, the appellants cannot re-open and re-agitate the matter viz-a-viz character and nature of the property. Earlier, the suit was filed by Prem Singh, Mewa Singh and Baldev Singh and the present appellants are successor-in-interest of Baldev Singh. Once the rights between the parties have already been crystalized and settled, in my view, filing of the suits, is an act of arm twisting tactics and act of intrinsic greed. A dispute already settled cannot be re-opened by filing perpetual suits one after another, as noticed above.

There is no force in the pleas of the appellants that the appeal viz-a-viz the claim and interest of Baldev Singh was withdrawn without there being any authority to the counsel, for, Baldev Singh had died during the pendency of the appeal, but sub-rule (2) of Rule 3 of Order 22 of the Civil Procedure Code, as applicable to this Court, provides that on demise of a deceased plaintiff, judgment may be pronounced notwithstanding his death and shall have same effect as if it has been pronounced before the death is taken place, in essence, the suit shall not abate and further the contract between the deceased and the pleader, in that event, shall continue to subsist, thus, the withdrawal of the appeal on behalf of the counsel representing Baldev Singh (since deceased) it shall not cease to exist.

Both the courts below on basis of oral and documentary evidence found that the suit was not maintainable and

rightly so, the same was dismissed being barred by doctrine akin res judicata.

With the aforementioned observations, I do not intend to differ with the finding rendered by both the courts below. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

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

(AMIT RAWAL)
JUDGE

February 17th, 2016
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