

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

DATE OF DECISION: JANUARY 29, 2016

**(1) C.M. NO.9690 C OF 2014 &
R.S.A. NO.4181 OF 2014**

Jarnail Singh

.....Appellant

VERSUS

Buta Singh and others

....Respondents

**(2) C.M. NO.9695 C OF 2014 &
R.S.A. NO.4185 OF 2014**

Gurnam Kaur and others

.....Appellants

VERSUS

Buta Singh and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vikas Singh, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

**C.M. No.9690 C of 2014 in R.S.A. No.4181 of 2014 &
C.M. No.9695 C of 2014 in R.S.A. No.4185 of 2014**

Prayer in these applications filed in the two appeals is for

condonation of delay of 2 days in refiling the appeals. The application is supported by the affidavit of the counsel.

For the reasons mentioned in the application, both the applications are allowed. Delay of 2 days in filing the appeal stands condoned.

R.S.A. Nos.4181 and 4185 of 2014

Since both the appeals have arisen out of the same judgments and decree of the Courts below, these are being decided by this common order.

Challenge in R.S.A. No.4181 of 2014 is to the judgment and decree dated 13.12.2011 passed by Additional Civil Judge (Senior Division), Guhla, whereby suit for declaration and possession and consequential relief with regard to land measuring 73 kanals 2 marlas, as detailed in the suit, situated within the revenue estate of Village Boupur, Tehsil Guhla, District Kaithal, has been decreed by setting-aside the judgment and decree dated 23.12.1992 passed in Civil Suit No.1335 of 1991 titled as 'Baru Vs. Gram Panchayat, Boupur, decided by the Additional Senior Sub Judge, Guhla, being void, conferring no right or title upon the appellant-defendants as it was a result of fraud, collusion, misrepresentation and based on fraudulent documents, stands decreed, appeal against which preferred by the appellant-defendants stands dismissed by the Additional District Judge, Kaithal, on 24.01.2014.

It is the contention of learned counsel for the appellant that Suit No.1335 of 1991 was filed on 03.12.1991 and was decreed on the basis of statement given by Amar Singh, Member Panchayat, wherein he conceded

the possession of the land in favour of predecessors-in-interest of the appellant-defendants for a long time. On the basis of the said statement, the suit was decreed on 23.12.1992. In the said decree, challenge was also made to mutation No.627, dated 14.06.1988, vide which in the ownership column, the land was transferred in the name of Gram Panchayat, showing it to be a *shamlat deh hasab rasad* and lateron, the entries were converted to *Panchayat Deh*. The said mutation entry was also found to be not in consonance with law as the principles of natural justice have not been complied with. He, thus, contends that the judgments and decree, as passed by the Court in Civil Suit No.1335 of 1991, is in accordance with the pleadings, written statement and statement given by the Member Panchayat, Amar Singh, who was duly authorised by the Gram Panchayat vide resolution dated 23.12.1992 (the date of resolution appears to be not correct as it is apparent from the records, which the counsel has referred to, wherein on the first date of hearing of the Civil Suit i.e. 03.12.1991, when the notice was issued, Amar Singh, Member Panchayat, appeared for the Gram Panchayat in Suit No.1335 of 1991). He, on the basis of the said resolution, contends that the authority having been conferred upon Amar Singh, Member Panchayat, was entitled to make the statement, as has been recorded by the Court, and accordingly he filed the written statement, where the claim of the respondent-plaintiffs in the said suit was accepted. Assertion has, thus, been made that the judgment and decree dated 23.12.1992, being in consonance with the stand of the parties, which was before the Court, the said decree is in accordance with law and, therefore, could not have been interfered with by the Courts below.

Further contention of counsel for the appellant is that the present suit is beyond limitation as the judgment and decree dated 23.12.1992 was to the knowledge of the respondent-plaintiffs from the date of the said decree itself whereas the present suit has been preferred on 22.03.2006, which is far beyond the period of limitation prescribed, which is three years from the date of knowledge.

Another plea has also been taken that the respondent-plaintiffs have no locus-standi to file the suit as it was the Gram Panchayat, which would be competent to file the same as it is the aggrieved party but no action has been taken by the Gram Panchayat in this regard and rather it has not even put in appearance nor filed written statement in the suit.

Counsel for the appellant further contends that Mutation No.627, which was under challenge in suit No.1335 of 1991, has already been set-aside by this Court in Civil Writ Petition No.11521 of 1990 (Sukhdev Singh Vs. State of Haryana and others), decided on 29.04.2011.

As regards Regular Second Appeal No.4185 of 2014 is concerned, the counsel contends that dismissal of appeal on the ground of limitation would be too harsh in the case in hand as there was a delay of just 60 days in filing the same and a just and reasonable ground was given for non-filing of the appeal within limitation by asserting that she was not intimated by the counsel with regard to preparation of the certified copy of the judgement passed by the trial Court, which has resulted in said delay. Apart from that, he contends that the appellant-defendants are bonafide purchaser of the property after verification of the revenue records, where the name of the owner was mentioned as Harbans Singh and Jarnail Singh. He,

thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set-aside.

I have considered the submissions made by learned counsel for the appellant and with his able assistance have gone through the impugned judgments but do not find any merit in the present appeal.

So far as contention of learned counsel for the appellant that the suit is time barred, the same cannot be accepted in the light of the findings recorded by the Courts below with regard to the fact that the judgement and decree dated 23.12.1992 was an outcome of the fraud having been played upon the Court. The stand of the respondent-plaintiffs in the plaint was that there was no resolution passed in favour of Amar Singh, Member Panchayat, which would confer any legitimacy upon the written statement, which has been filed in the suit or his statement, which he has made in the Court, admitting the claim of the predecessors-in-interest of the respondent-plaintiffs, especially Baru. The onus, after this initial assertion, was upon the appellant-defendants, especially when the respondent-plaintiffs had taken a stand that there was a resolution of the Gram Panchayat, authorising Amar Singh, Member Panchayat, to appear and contest on behalf of the Gram Panchayat and to take a specific stand in this regard to prove such a resolution to exist. Unfortunately, no such resolution has been produced on record by the appellant-defendants. In the absence of the resolution, authorising Amar Singh, Member Panchayat, to file the written statement and to suffer a statement in favour of the respondent-plaintiffs in suit No.1335 of 1991, the findings, as recorded by the Courts below with regard to a fraud having been played upon the Court, which resulted in passing of

the decree, cannot be faulted with. It may be added here that one of the witnesses, who had appeared for appellant-defendants, namely, Jarnail Singh (appellant in R.S.A. No.4181 of 2014) has stated that resolution was dated 23.12.1992. If that be so, the fraud is apparent on record as the judgement and decree is of the same date i.e. 23.12.1992. The suit was filed on 03.12.1991 on which date notice was issued and on that very day, Amar Singh, Member Panchayat, had put in appearance on behalf of the Gram Panchayat and filed written statement. Further, he had given a statement in the Court, accepting the claim of the respondent-plaintiffs. If that be so, his appearance before the Court, filing of written statement and making statement in the Court in favour of the respondent-plaintiffs in suit No.1335 of 1991 was without any authority as the said resolution, even if accepted to be there, is dated 23.12.1992 as per the statement of appellant-Jarnail Singh and on this date the judgement and decree had been passed. The said decree is, thus, void. The learned lower Appellate Court has gone into this aspect in detail and has culled out correct factual and legal position, which cannot be said to be in any manner erroneous, calling for interference by this Court.

Further, the assertion of learned counsel for the appellant that mutation No.627, which was under challenge in that suit, has been set-aside by this Court in Sukhdev Singh's case (supra), also cannot rescue the appellant-defendants from the factum of a decree, which he had obtained on the basis of a fraud, as has been established on the basis of the pleadings and the evidence of the present case brought on record. Fraud having been played on the Court, which has been established, cannot be over-looked merely because in another writ petition the said mutation No.627 has been

set-aside.

As regards the R.S.A. No.4185 of 2014, the appeal of the appellant-defendants has been dismissed by the learned lower Appellate Court on the ground that it is barred by limitation as the appeal has been filed after a delay of 60 days. Suffice it to say that the reason as have been pointed out in the application for condonation of delay that the counsel had not informed about the certified copy having been obtained by the trial Court, which resulted in delay in filing the appeal, cannot be accepted as a litigant is required to be vigilant about his rights and cannot simply take the shelter or advantage of an inaction on the part of the counsel. The litigant is required to pursue his matter with full vigil, caution and diligently. Having failed to do so, the Courts have rightly proceeded to dismiss the appeal of appellant-defendants being barred by limitation.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeals. Therefore, finding no merit in both the appeals, the same stand dismissed.

January 29, 2016
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE