

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

(1)

RSA-4189-2014 (O&M)

Decided on: 12.02.2016.

Maya Devi (deceased) thr. LRs and others

... Appellants

Versus

Mehar Singh and others

... Respondents

(2)

RSA-4464-2014 (O&M)

Decided on: 12.02.2016.

Maya Devi (deceased) thr. LRs and others

...Appellants

Versus

Mehar Singh and others

...Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Aman Bansal, Advocate,
for the appellants.

JITENDRA CHAUHAN.J.

This judgment shall dispose of afore-mentioned two appeals bearing No. RSA 4189 of 2014 titled as “Maya Devi (deceased) through LRs and others Vs. Mehar Singh and others” and RSA No. 4464 of 2014 tiled as “Maya Devi (deceased) through LRs and others Vs. Mehar Singh and others” filed against the common judgment and decree dated 28.04.2014 passed by the Additional District Judge, Karnal vide which the appeal filed by the defendants were dismissed and the judgment and decree dated 13.11.2010 passed by the Civil

Judge, (Senior Division) were upheld. The suit remained decreed.

In brief, the plaintiffs filed suit for declaration to the effect that they are owners in possession of equal share of land measuring 19 Kanals 4 Marlas i.e. 1/12th share of total land measuring 230 Kanals 7 Marlas described in the plaint. The prohibitory decree of injunction was also sought against the defendants.

The plaintiffs sought declaratory decree on the ground that they are owners in possession of aforesaid land fully described in the plaint, situated within the Revenue Estate of Village Rahra, Tehsil Assandh, District Karnal by virtue of Civil Court decree passed in civil suit No. 418 of 1975 by the then Sub Judge, Kaithal. The defendants tried to dispossess the plaintiffs. Hence the suit.

The defendants contested the suit and raised preliminary objections of non-maintainability, locus standi, cause of action, estoppel, suppression of true and material facts, mis-joinder and non-joinder of necessary parties, resjudicata and limitation. On merits, the defendants raised the defence that the decree dated 01.04.1980 was never acted upon and no mutation was ever got sanctioned on the basis of that decree. The defendants are in peaceful possession over the suit land. Their possession is continuous, un-interrupted and in the complete knowledge of the plaintiffs and their predecessors in interest. Hence, the plea of adverse possession was taken by the defendants. The plaintiffs had earlier filed another suit titled as “Meher Singh and others

Vs. Sapattar Singh and others” seeking possession of the suit land so,

the present suit was hit by the principle of res-judicata. In the present suit, the defendants also filed counter claim seeking declaration that the defendants are owner, in possession of the suit land.

From the pleadings of the parties, following issues were framed :-

- (a) Whether the plaintiffs are entitled for decree for declaration as prayed for?
- (b) if issue No. 1 is proved whether the plaintiffs are entitled for decree for permanent injunction as prayed for?
- (c) whether the suit is not maintainable?
- (d) whether the suit is bad for mis-joinder and non-joinder of necessary parties?
- (e) whether plaintiffs have no locus standi to file and maintain the present suit?
- (f) whether plaintiffs have not come to the Court with clean hands?
- (g) whether suit is time barred?
- (h) whether the suit is barred by the principle of resjudicata?
- (i) Relief.

Under issue No. (a), the learned trial Court held that since Civil Court decree dated 01.04.1980, passed by Sub Judge,

Kaithal created a title in favour of the plaintiffs, so they had every right

to protect and preserve their interest in the suit land against anyone including the defendants. Under issue no. (g), the suit was held to be within limitation. Under issue No. (h), it was observed that the earlier civil suit No. 147 of 2007 filed by the plaintiffs was dismissed in default on 20.05.2008. The lis was not decided on merits, therefore, the bar of res-judicata was not attracted to the facts of the case. Keeping in view the finding on all the issues, the suit of the plaintiff was decreed.

Feeling dissatisfied, the defendants filed two appeals before the Additional District Judge, Karnal challenging the decree whereby the suit was decreed and the dismissal of the counter claim. The Lower Appellate Court dismissed both the appeals and upheld the findings recorded by the trial Court. Hence, the present appeals.

On behalf of the appellants, it is contended that the suit filed by the plaintiff is barred by the principle of res-judicatata. The plaintiff earlier filed civil suit no. 174 of 2007 claiming the same relief as claimed in the present suit. Once, the matter stood adjudicated, the subsequent suit on the same cause of action is hit by the principle of resjudicata.

It is further contended that both the Courts below have committed grave error in not appreciating the fact that the defendants are in adverse possession of the suit property. The plaintiff never came into possession of the suit property. The decree Ex. P1 in civil suit no. 418 of 1975 was never acted upon. Even the mutation was not got sanctioned on the basis of decree Ex. P1. The findings recorded

by both the courts below have resulted into miscarriage of justice. Therefore, the same are liable to be reversed.

The plaintiff, Mehar Singh and others had filed suit for declaration and permanent injunction on the basis of civil Court decree passed in civil suit no. 418 of 1975 by the then Sub Judge, Kaithal. In that civil suit, the defendant made a statement and compromise, Ex. P2 was effected between the parties. The compromise decree was passed. Vide decree Ex. P1, the plaintiffs were held to be the owners of land measuring 19 kanal 4 marlas being 1/12th share of the total land measuring 230 kanals 7 marlas. As a result, the plaintiffs became co-sharers in the suit land. Once the plaintiffs became co-owners of the suit land, they have every right to protect their interest in the suit property. As the parties held the status of co-sharer in the suit land, neither of them can claim their possession to be adverse to the others. So, the plea of adverse possession was rightly declined by both the courts below.

The earlier civil suit no. 174 of 2007 was dismissed in default on 20.05.2008. The lis was not decided on merits. Therefore, the principle of resjudicata is not attracted to the facts of the present case. This Court does not find any infirmity or illegality in the concurrent findings recorded by both the courts below. The rights of the parties stood decided in the earlier suit No. 418 of 1975 on the basis of compromise. In the present case, the plaintiff is seeking a decree declaring his rights in the suit property. The concurrent findings of fact

recorded by both the courts below that the parties are co-sharer in the suit land, therefore, no one can be said to be in a hostile position to the other as the possession of one co-sharer is on behalf of other co-sharer as well, is inconsonance with the settled legal position. The non-sanctioning of mutation on the basis of decree Ex. P1 does not disentitle the plaintiff from seeking declaratory decree of title. The mutation is nothing but carrying forward of change of entries. The mutation itself does not confer any right, even if, the decree Ex. P1 was never acted upon, the rights accruing therefrom can be claimed by the parties at any time. This Court finds no reason to disturb the concurrent findings recorded by both the courts below. No question of law much less substantial question of law arises in the present appeal. Therefore, both the appeals are dismissed.

12.02.2016
SN

(JITENDRA CHAUHAN)
JUDGE