

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

RSA-5428-2014

Date of decision: 11.04.2016

Ram Lal

...Appellant(s)

Versus

Vijay Kumar

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rai Singh Chauhan, Advocate for the appellant.

JITENDRA CHAUHAN, J.

Plaintiff Ram Lal, adopted son of Aidaan, has filed this second appeal, having been non-suited by both the Courts below.

It is the case of the plaintiff-appellant that previously his mother, namely, Surji Devi was owner in possession of the suit property and after her death, he inherited the property being her son. Neither Smt. Surji Devi, nor Aidaan, the father of the plaintiff relinquished their rights in favour of defendant-Jiwani Devi but the latter, in collusion with her husband, namely, Banwari Lal, with *mala fide* intention to grab the suit property secured judgment and

decree dated 17.12.1965 on false facts and by misleading the Court. Said Surji Devi was allegedly defrauded. There was no statement of Surji Devi. Since, Jiwani Devi was not having any pre-existing right, so the decree was compulsorily required to be registered.

The defendant-respondent(s) contested the suit tooth and nail and averred that the suit is hopelessly time-barred. It was urged that Smt. Surji Devi never challenged the said decree during her lifetime and that the plaintiff-appellant has no *locus standi* to challenge the said decree. All other material allegations were denied and the dismissal of the suit was prayed for.

It is pertinent to mention here that original defendant No.1, namely, Banwari Lal, expired during the pendency of the suit.

Learned Civil Judge (Junior Division), Abohar, vide judgment and decree dated 06.04.2011, dismissed the suit. First appeal filed by the plaintiff was also dismissed vide impugned judgment and decree dated 25.04.2014. Feeling aggrieved, the plaintiff has filed this regular second appeal.

I have heard learned counsel for the appellant and perused the case file.

Learned counsel for the appellant vehemently contended that factum of fraud is clearly established. Motive of defendant was to grab the property. Suit was filed on 30.11.1965 and that too through attorney. Neither there is any document of the attorney, nor the attorney appeared. Till 1997, the impugned decree had not seen the light of the day. He further contended that the decree was required to be registered.

I have carefully considered the aforesaid contentions but the same cannot be accepted. It is no doubt true that a decree can be set aside on the ground of fraud. The material particulars of fraud must be specifically pleaded and proved, which has not been done in the pleadings. So there is no specific issue regarding alleged fraud. The plaintiff has miserably failed to prove the alleged fraud. Even in civil cases, fraud is required to be proved beyond reasonable doubt, just like a criminal charge. Reliance can be placed on *Har Narain and another Vs. Revti Parkash and others. 2012(2) PLR 409*. In the instant case, what to talk of proving the alleged fraud beyond reasonable doubt, the plaintiff has even failed to establish the alleged fraud by preponderance of evidence. It cannot be lost sight of fact that said Surji Devi died on December 10, 1976 and during her lifetime no complaint or

grievance was ever made by her against the impugned decree. Surji Devi herself could have challenged the decree on the basis of fraud, if any, during her lifetime. Any such grievance made by the plaintiff appellant, after her death is not legally sustainable. Furthermore, the suit has been rightly held to be barred by limitation by both the Courts below. In the instant case, evidence of the defendants far outweighs the evidence led by the plaintiff-appellant. It is established on record that after the passing of the impugned judgment and decree, initially Banwari Lal (since deceased) remained in possession of the suit property, followed by his wife Jiwani Devi and thereafter, defendant-respondent Vijay Kumar is in possession of the suit property.

Plea of the plaintiff-appellant that the decree required registration does not cut much ice. It is an admitted fact that Surji Devi and Jiwani Devi were closely related to each other as husband of Surji Devi was brother of defendant Jiwani Devi. That couple, Surji Devi and Aidaan, died issueless. Accordingly, that decree was within close relations. In ***Bant Singh Vs. Lakhbir Singh and others, 2005(2) Civil Court Cases 496 (P&H)***, it was held that in case of consent decree, wherein, even a person who does not have right of inheritance but being closely related member of the family,

could be covered by the family settlement and that decree does not require registration. In this backdrop of the matter, non-registration of said decree dated 17.12.1965, would not be fatal to create right, title or interest in favour of Jiwani Devi.

The appellant has tried to assail the said decree on the premises that suit was filed through attorney in the year 1965 but neither any document of attorney was filed nor the said attorney appeared before the Court. A consent decree is as good as any other decree. Hon'ble the apex Court in **Bishnu Deo Narain and others Vs. Seogini Rai and others, AIR 1951 SC 280**, has held that it does not matter whether the decree was consent or otherwise, for a decree until and unless it is set aside or avoided, in one way or the other, it holds the field. Admittedly, the decree was passed in the year 1965 and said Surji Devi died in the year 1976 but the said decree was not challenged by her during her lifetime. It hardly matters if the power of attorney holder had not appeared, rather, it is established on record that the said judgment and decree was passed on the basis of admission on behalf of Surji Devi.

Further, the simpliciter suit for declaration without claiming possession of the suit property has rightly been held to be not maintainable by learned first Appellate Court. Even, the

plaintiff has no *locus standi* to file the suit to challenge the impugned judgment and decree. Initially, the plaintiff claimed himself to be son of Surji Devi and Aidaan. He had chosen not to plead in original pleadings in the civil suit that he was their adopted son. Rather, defendants got proved that he is real son of defendant Jiwani Devi from the loins of her husband Banwari Lal, meaning thereby, real brother of defendant-respondent Vijay Kumar. Thus, this Court has no hesitation in holding that the plaintiff remained incompetent to challenge the said judgment and decree. It is worthwhile to mention here that impugned decree is dated 17.12.1965, the civil suit to challenge the decree was filed on 14.06.1997, after about 32 years, which is clearly barred by limitation.

There is concurrent finding of both the Courts below to non-suit the plaintiff on the ground that the alleged fraud is not proved. The evidence on record has been appreciated in the correct perspective. No question of law, much less substantial question of law, arises in the present appeal.

Dismissed in limine.

11.04.2016

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(JITENDRA CHAUHAN)

JUDGE