

Sr. No. 203

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

**RSA No. 1512 of 2013
Decided on: 07.10.2017**

Jeet Singh

.....Appellant

versus

Kanwaljeet Kaur and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Gopal Sharma, Advocate
for the appellant.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the defendant against the concurrent findings recorded by the Courts below; granting against him the declaration and a decree for joint possession in favour of the plaintiffs qua the property mentioned in the plaint; by declaring the impugned judgment and decree dated 25.04.2006 and the subsequent revenue entries as illegal, null and void and not binding upon the rights of the plaintiffs.

The facts as pleaded by the plaintiffs are that plaintiff No. 1 is the widow of Malkiat Singh and plaintiffs No. 2 and 3 are the daughters. It was pleaded that Malkiat Singh had become the owner in joint possession of the land measuring 133/878 share out of the land mentioned in para No. 1 of the plaint; as per the jamabandi of the year 1988-1989. After the death of Malkiat Singh the said share was inherited by the plaintiffs in equal share and mutation No. 2179 was entered to that effect in the revenue records. It was further claimed by the plaintiffs that after the death of Malkiat Singh plaintiff No. 1 was shunted out from her house alongwith her two minor daughters by the defendant and his wife; illegally and after giving them

beating. It was further pleaded that by taking undue advantage of the absence of the plaintiffs, the defendant fraudulently got suffered in his favour the impugned decree of 169/878 share out of the suit land; in civil suit No. 19/96 decided on 25.04.1996 titled as Jeet Singh vs. Kanwaljit Kaur. The plaintiffs have challenged the said decree. It was further alleged that after the said decree, in collusion with the revenue officials, the defendant got mutation No. 2316 entered in his favour and that the defendant, thereafter, started threatening to alienate the share of the plaintiffs in the suit land; on the basis of the above said decree and the subsequent revenue records. Therefore, the declaration of the joint possession and injunction against the defendant was prayed for by the plaintiffs.

On notice, the defendant had appeared and filed a written statement submitting that the decree passed in his favour was legal and valid.

Thereafter, the plaintiffs led evidence to establish their case. They examined witnesses had also placed on record the documents. On the other hand, the defendant did not lead any evidence at all. His evidence was struck off vide order dated 12.11.2009 and he was, ultimately, proceeded against ex parte vide order dated 14.11.2009.

After considering the evidence on file, the learned Trial Court decreed the suit and held the impugned decree as illegal, null and void and not binding upon the rights of the plaintiffs. The plaintiffs were also held entitled to the decree of joint possession of 133/878 share in the suit land and further an injunction was granted, as consequential relief, restraining defendant from alienating that share from the suit property.

Aggrieved of the judgment and decree, the present appellant filed appeal before the Court of District Judge, Kaithal. However, the lower Appellate Court also dismissed the appeal. Hence the present second appeal is filed by the defendant.

While dismissing the appeal filed by the appellant the lower Appellate Court held that the present appellant/defendant had been granted more than sufficient opportunities by the Trial Court. However, he had failed to adduce any evidence whatsoever to support his case. It was further recorded that even the permission to lead evidence was allowed to the present appellant despite the closure of his evidence. However, again the present appellant/defendant did not appear and got himself proceeded ex parte. Thereafter, the appellant had moved an application for setting aside the ex parte proceedings. Again that application was allowed and the present appellant was granted opportunity to lead the evidence. However, once again he did not appear and therefore, again proceeded ex parte. Therefore, the suit of the plaintiffs was rightly decreed on the basis of the evidence led by them.

The plea of the defendant that he was bed ridden for 5-6 months continuously and regarding some compromise in December, 2008, the lower Appellate Court held that the present appellant has not led any evidence on this point despite granting several opportunities to him. Therefore, the Trial Court had rightly rejected the plea of the present appellant. Still further the lower Appellate Court also concerned with the finding of the Trial Court that the evidence of the Hand-writing and finger print expert shows that the thumb impressions claimed by the present appellant/defendant to be the thumb impressions of plaintiff No. 1 do not match. Therefore, it was found

that these were not the thumb impressions of plaintiff No. 1. Still further it was held that as per the evidence on record it has been proved that the plaintiffs No. 2 and 3 were minors at the time of the decree and that the plaintiffs were impersonated by some other person before the civil court. Therefore, the present appellant/defendant had procured the impugned judgment and decree by playing a fraud upon the Court as well. Further, plea of the appellant that plaintiff No. 1 had already obtained divorce from Malkiat Singh was held to be not helpful to the appellant on the ground that the decree itself was obtained by the appellant by describing the plaintiff No. 1 as wife of the said Malkiat Singh.

In the present appeal also the appellant has not been taking interest to pursue the appeal in the right earnest. Even the service of the respondents has not been completed. Despite obtaining several dates even the legal representatives of respondent No. 1 has not been impleaded as party in the proceedings.

Therefore, no decree can possibly be passed against the plaintiff who is already dead. So far as the merits of the case are concerned, learned counsel for the appellant has vehemently contended that the appellant was not granted proper opportunity by the Trial Court to lead the evidence. It is further pleaded by him that the finding recorded by the Court regarding the fraud involved in obtaining the impugned decree from the Court is perverse. He has repeated the same argument that plaintiff No. 1 had already obtained divorce from Malkiat Singh. Therefore, she can not claim any benefit qua the properties of said Malkiat Singh.

Having heard learned counsel for the appellant, this Court finds that there is no illegality, irregularity or perversity in the findings recorded

by the Courts below. A bare perusal of the record shows that the present appellant was granted several opportunities to lead the evidence. Not only that, despite closure of his evidence he was again granted opportunity to lead the evidence. Despite that he got himself proceeded against ex parte. This shows that he had no interest to contest the suit. The entire effort was to somehow prolong the proceedings as much as he can.

Hence the Courts below have rightly recorded the finding that the present appellant had been granted sufficient opportunities. Otherwise also the Courts below have rightly recorded the finding that the impugned judgment and decree was obtained by the appellant/defendant by way of playing fraud upon the Court. This finding is completely supported by the evidence on record which shows the thumb impressions of plaintiff No. 1 not tallying with the thumb impression claimed by appellant. Still further it is clear from the evidence that plaintiff Nos. 2 and 3 were minors at that point of time. No Court guardian for them was got appointed in those proceedings. Therefore, decree otherwise also stands vitiated *per se*.

No other argument was raised by learned counsel for the appellant.

In view of the above, finding no illegality or perversity in the findings recorded by the Courts below, the present appeal is dismissed being devoid of any merits.

7th October, 2017

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned Yes

Whether Reportable Yes