

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

RSA No.1913 of 2013 (O&M)

Date of Decision: 3.8.2017

Darshan Singh & Another

... Appellants

Versus

Jaswant Kaur and Ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ajay Pal Singh, Advocate for the appellants

RAJIV NARAIN RAINA, J. (Oral)

1. This regular second appeal has been filed by the appellants/plaintiffs assailing the judgment and decree dated 3rd December, 2012 passed by the first appellate court reversing the judgment and decree dated 3rd March, 2010 passed by the trial court.

2. The real issue arising in this case for determination is whether the minor held title by way of adoption before he could claim that the decree obtained by the defendants was a product of fraud and not binding on him since a decree against a minor is void. In raising this argument, Mr.Ajay Pal Singh, learned counsel for the appellants fails to see that the foundation of claim based on title was based on adoption. The event of adoption was asserted in paragraph 2 of the plaint and was denied by the defendants. Therefore, the triable issue was whether there was legal and valid adoption of the minor by Gurdial Singh.

3. In absence of striking such an issue, or claiming it, though it was the duty of the Judge, I take it upon myself to frame that issue, that is to say, whether adoption in this case has been proved by necessary ingredients of giving and taking and to what effect?

4. The answer to this issue is simple enough that plaintiffs failed to lead evidence on this core issue which arose for determination and therefore, they must fail having failed to discharge the burden of proof.

5. Furthermore, the suit filed by the plaintiffs/appellants was beyond limitation. Defendants 1 and 2 became absolute owners of the land which was mentioned in Suit No.312 filed on 26th October, 1993 and decreed on 26th October, 1993 in favour of defendants 1 and 2. The suit land was further alienated by defendants 1 and 2 in favour of defendants 3 and 4 vide registered sale deed who stepped into the shoes of the vendors and become owners of the suit land and are in possession thereof. In the earlier suit, the plaintiffs/appellants were party to the lis and the said suit had been decreed against them.

6. Plaintiff/Appellant, Raj Kaur alleged before the trial court that at the time when the suit was decreed against her, she was a minor as she was born on 23rd June, 1978. The learned first appellate court considered this aspect and observed that even if it is assumed to be true that plaintiff, Raj Kaur was born on 23rd June, 1978, then she would have attained the age of majority on 23rd June, 1996 and could have challenged the judgment and decree dated 26th October, 1993 within a period of three years from 23rd June, 1996 i.e. only upto 22nd June, 1999, whereas the present suit was filed on 15th June, 2005 which is clearly barred by limitation. The first appellate court also observed that they were well aware of the passing of the decree against them and there is no question of fraud coming to their knowledge later on when they themselves were party to the lis.

7. On the basis of the lack of evidence and materials on record justifying a decree in favour of the plaintiffs/appellants, it is not possible for this Court to interfere with the findings of fact recorded by the first appellate court. The judgment and decree of the first appellate court does not suffer from any illegality, irregularity or perversity nor the same can be said to be tainted with any error apparent on the face of record so as to require interference by this Court in appeal. No question of law, much less a substantial one, arises for consideration in this appeal.

8. For the foregoing reasons, this appeal is held to be without substance and is dismissed. The judgment and decree dated 3rd December, 2012 passed by the learned Additional District Judge, Sangrur is maintained as correctly decided on law and facts after appreciating the evidence. Appeal dismissed.

3.8.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No