

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.2591 of 2016
Date of decision:30.3.2017**

Krishan Yadav (since deceased) through his LRs

...Appellant(s)

Versus

Shiv Charan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Anil Goel, Advocate for the appellant(s) with
appellant No.1 in person.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned judgment and decree dated 8.2.2016 passed by the learned District Judge, dismissing their first appeal and upholding the judgment and decree dated 1.5.2014 of the learned trial Court, whereby suit for declaration and injunction was dismissed, legal representatives of original plaintiff namely Krishan Yadav have approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by the learned trial Court in para 2 of its impugned judgment, are that the parties to the suit are the descendants of their common ancestor Jiya Ram son of Nanak Chand. Jiya Ram has since died. Sh. Jiya Ram was co-owner in possession of the agricultural land detailed in Para No. 2 of the plaint. On demise of Jiya Ram, the land in question was inherited by his seven legal heirs including the plaintiff, i.e., 1/7th share each i.e. 19/924 share out of land mentioned in 2(a) and 1/35 share out of land mentioned in Para 2(b).

Apart from the inheritance of above share on demise of Jiya

Ram, the plaintiff was already a co-sharer in joint possession to the extent of 26.3/132 share in the land detailed in Para No. 2 (a) of plaint and 1/5 share in land detailed in Para No. 2(b) of plaint. It was further submitted that the plaintiff was aged about 50 years and suffered a paralysis in the year 2000 and on account of said paralysis the right portion of the plaintiffs body was badly affected and he was still under treatment, however, was unable to sign and to use his right hand in any manner. The plaintiff decided to separate his share from the suit land and for that purpose his wife Kmalesh Yadav and son Ajay Yadav contacted village Patwari in the month of May 2003 and were shocked to note about the passing of fraudulent decree in suit bearing No. 443 dated 13.11.1991. The said judgment and decree were never suffered by Jiya Ram or plaintiff in favour of Satbir and Ajit and same was null and void. The plaintiff or Jiya Ram never appeared in the said suit nor received any summon from the Court and they never engaged Sh. DP Khatana, Advocate and never filed any written statement. The said decree has been obtained by Satbir and Ajit by playing fraud and by impersonating themselves as plaintiff and Jiya Ram. No family settlement as pleaded in the plaint or that suit had taken place between the parties to the suit and there was no occasion for alleged family settlement. The plaintiff was still co-owner in possession of the land in question and never relinquished his share in favour of defendant Satbir and Ajit. The decree in question was without notice, concern and knowledge of the plaintiff. The mutation on the basis of said decree was even sanctioned in the year 2002, i.e., after 11 years which shows that defendant kept the entire matter to themselves so that the plaintiff would never come to know about the decree

in question. The plaintiff called upon defendants to admit the right and title of the plaintiff and get the decree dated 30.11.1991 and mutation No. 4771 declared null and void but to no avail.

Having been put to notice, defendants put in appearance and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the judgment and decree dated 30.11.1991 passed in Civil Suit No. 443 of 1991 titled as Satbir Vs. Jiya Ram and subsequent mutation on its basis is illegal, null and void on the ground mentioned in the plaint and plaintiff is owner in possession of the suit land?OPP.
2. If issue No. 1 is proved whether the plaintiff is entitled to decree for mandatory injunction as prayed for?OPP.
3. Whether the suit is not maintainable in the present form?OPD.
4. Whether the suit of the plaintiff is barred by limitation?OPD.
5. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has failed to prove his case. Accordingly, his suit for declaration and injunction was dismissed by the learned trial Court, vide impugned judgment and decree dated 1.5.2014. First appeal was filed, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 8.2.2016. Hence, this regular second appeal, at the hands

of legal representatives of original plaintiff-Krishan Yadav against both the judgments and decrees passed by the learned courts below.

Heard learned counsel for the appellants.

A bare combined reading of both the impugned judgments and decrees would show that instant case of the appellants was based on fraud and misrepresentation, right from day one. It was specifically pleaded case of the original plaintiff-Krishan Yadav that the judgment and decree dated 30.11.1991 passed by the learned court in Civil Suit No.443 of 1991 titled as 'Satbir Vs. Jiya Ram' and subsequent mutation sanctioned on the basis thereof, were illegal, null and void, based on fraud and mis-representation. Accordingly, issue No.1 was framed. However, the plaintiff miserably failed to prove the plea of fraud, by leading cogent evidence. In addition to the plea of fraud, suit of the plaintiff was also found hopelessly time barred and issue No.4 was also decided against him.

It is also not in dispute that parties to the instant litigation were members of the same family. Late Sh.Jiya Ram was the common ancestor. Case of the defendants was based on family settlement. It goes without saying that initial onus was on the plaintiff to prove his case qua judgment and decree dated 30.11.1991, mutation as well as family settlement. All the four material issues came to be decided against the plaintiff and in favour of the defendants, for want of sufficient evidence produced on behalf of the plaintiff. Having said that, this Court feels no hesitation to conclude that the learned trial Court was well within its jurisdiction to pass the impugned judgment and order dated 1.5.2014 and the same deserve to be upheld.

Similarly, the learned first appellate court re-examined,

considered and appreciated each and every relevant aspect of the matter in the correct perspective, before arriving at a judicious conclusion and the impugned judgment and decree passed by the learned trial Court were rightly upheld. Cogent findings recorded by the learned first appellate court in paras 15 and 16 of its impugned judgment, which deserve to be noticed here, read as under:-

“At the out set, so far as first point for determination is concerned, appellants have taken plea of impersonation of their predecessor-in-interest Krishan Yadav in the earlier suit which is supported by other circumstantial evidence that the earlier judgment and decree which were passed in the year 1981 were not acted upon and Mutation No.4771 was sanctioned in the year when co-defendant Jia Ram in the earlier suit had expired and Krishan Yadav, predecessor-in-interest of appellants had suffered paralytic stroke. No doubt, there is delay in getting the mutation sanctioned on the basis of impugned judgment and decree but this delay does not point towards the earlier decree being result of fraud or misrepresentation in absence of any cogent and convincing evidence available on the record to that effect. It is settled law that plea of fraud even in the civil suits has to be established beyond the shadow of reasonable doubt but in the case in hand there is no such cogent and convincing evidence available on the record to prove this allegation of fraud or misrepresentation except for the bald statement of Krishan Yadav and report Ex.P4/1 to Ex.PW4/7 of PW-4 Naresh Kataria, Handwriting and Finger Prints Expert. It is settled law that Handwriting and Finger Prints Experts always give opinion in favour of the parties engaging them particularly in a case of comparison of signature taking advantage of the fact that science of handwriting is not a perfect science. In the backdrop of facts when there are two rival opinions of Handwriting and

Finger Prints Experts engaged by both the parties no reliance can be placed upon the opinion of such Handwriting and Finger Prints Experts except some other cogent and corroborative evidence. No doubt, learned lower court can take independent view by examining the impugned handwriting but in the case in hand it is not required so because there is no other corroborative evidence available on the record to show that some fraud was played upon Krishan Yadav, the predecessor-in-interest of the appellants.

In the case in hand, it is worthwhile to note that there is no stranger but parties are successors-in-interest of Jia Ram, one of codefendants in the earlier suit, who suffered the impugned decree in favour of respondents No.2 and 3. Initially, it was pleaded by plaintiff Krishan Yadav (since deceased, now being represented by appellants) that his father Jia Ram was also impersonated in the earlier suit but lateron he took a "U" turn while giving suggestion to the witnesses of respondents that impugned decree was procured by respondents No.2 and 3 in collusion with said Jia Ram and other brothers of Krishan Yadav. Although, it is argued on behalf of the appellants that there was no reason to relinquish his share by Krishan Yadav in presence of his wife and children (present appellants) but this contention of appellants is not much convincing because it is admitted fact that Krishan Yadav, predecessor-in-interest of present appellants and his other brothers were living jointly with their father Jia Ram. It is also admitted by Krishan Yadav as PW-1 in his cross-examination that he was not having inimical relations with his father Jia Ram and his brothers. Therefore, there was no reason as to why Jia Ram could have suffered the impugned decree against the interest of his sons including Krishan Yadav, who has challenged the impugned judgment and decree. There is no evidence available on the record that said Jia Ram was impersonated in the proceedings of the earlier suit in the Court. It is worthwhile to mention that

*if it was a case of fraud or mis-representation then no criminal complaint or FIR was got lodged by Krishan Yadav or the present appellants. When this query was put during the course of arguments to learned counsel for appellants then in order to cover up this act and conduct they have stated to have lodged some criminal complaint against respondents No.2 and 3 and DW-4 Shri Dharampal Khatana, Advocate. It is also worthwhile to note that respondent No.1, who is real brother of plaintiff Krishan Yadav (since deceased) has deposed that Krishan Yadav and his father Jia Ram had appeared to file admission written statement and to make statement in the Court of law during the proceedings of the earlier suit. There was no need for respondent No.1 as DW-3 to depose against his interest when he was not getting any benefit from the previous decree which was in favour of his brothers-respondents No.2 and 3. Another circumstance which speaks volumes of the concocted story put-forth by appellants or their predecessor-in-interest Krishan Yadav to challenge the impugned judgment and decree after about 17 years. It is a matter of common experience that it is not uncommon that such consent decrees are suffered voluntarily and later on, the persons who suffered such decrees, change their mind and challenge the same on different grounds. It is only where fraud is established beyond reasonable doubt that such consent decree can be set aside as observed by our own Hon'ble High Court in authority of law **2013 (5) RCR (P&H) 206 (supra)**. Similarly, it is settled law that plea of fraud in a civil suit is to be proved beyond shadow of reasonable doubt as in criminal case but in the case in hand there is no such evidence available on the record except self serving statement of plaintiff Krishan Yadav and PW-4 Naresh Kataria, Handwriting and Finger Prints Expert, who have failed to establish the plea of fraud beyond reasonable shadow of doubt. Here reliance can be placed upon authority of law in case **Union of India Vs. M/s***

Chaturbhai M. Patel & Company, 1976 CLJ (Civil) (SC) 166
*wherein it has been held that **plea of fraud like any other charge whether made in civil or criminal proceedings, must be established beyond reasonable doubt. However, suspicious may be the circumstances, however, strange the co-incidence and however grave the doubts, suspicion alone can never take the place of proof.** Similarly, reliance can also be placed upon authority of law in case Santokh Singh and another Vs. Sukhwinder Singh and others, 2013 (1) PLR (P&H) 209. In these circumstances, it can be safely concluded that appellants have miserably failed to prove the impugned judgment and decree as a result of fraud or mis-representation.”*

It is the settled principle of law that as and when a plea of fraud and misrepresentation is taken up by any party to the litigation, a heavy onus would be on the said party to prove the plea of fraud and misrepresentation by leading cogent and convincing evidence. In the present case, plaintiff-predecessor-in-interest of present appellants, miserably failed to produce on record sufficient and cogent evidence to prove the plea of fraud and misrepresentation. Further, the suit of the plaintiff was also rightly found barred by limitation. Under these undisputed facts and circumstances, it can be safely concluded that both the learned courts have committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The above-said view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

1. Sri Gangai Vinayagar Temple and another Vs.

- Meenakshi Ammal and others, 2015 (2) SCC (civil) 350 (SC);**
- 2. Punjab Urban Planning and Dev. Authority Vs. M/s Shiv Saraswati Iron and Steel Re-Rolling Mills, 1998 AIR (SC) 2352 (SC);**
- 3. Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85 (SC);**
- 4. Zarina Siddiqui VS. A.Ramalingam alias R.Amarnathan, 2015 (1) SCC 705 (SC);**
- 5. Swarn Singh Vs. Swarn Kaur and others, 2004 (2) RCR (civil) 505 (P&H);**
- 6. Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (civil) 520 (P&H);**
- 7. M/s Machhi Ram Kishan Singh Sidhana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (civil) 506; and**
- 8. RSA No.341 of 2016 (Birmati Vs. Naseeb Singh) decided on 16.2.2016**

Learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. Further, during the course of hearing, learned counsel for the appellant could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil)**

286 and Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

30.3.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No