

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

**RSA No.2604 of 2016 (O&M)
Date of Decision: February 14, 2017**

Smt. Suresh & Ors.

..Appellant(s)

Versus

Smt. Beero & others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Shailendra Jain, Sr. Advocate with
Mr. Satyendra Chauhan, Advocate and
Mr. Sahil Nayyar, Advocate
for the appellants.

ANITA CHAUDHRY, J.

This is the plaintiffs' appeal against the dismissal of the suit
and the appeal by both the Courts below.

A mutation was entered in the revenue record on the basis
of a judgment and decree dated 11.01.1997. The plaintiffs claim that
the mutation had been procured by fraud, mis-representation,
concealment of facts and was not binding on their ownership and
possessory rights and they were owners and co-sharers to the extent of
6/7 share in the suit land.

The plaintiffs and the defendant are the daughters & grand
children of Babu son of Gopal. Babu owned 95 Kanal 17 Marlas of
land in District Palwal. The pedigree table of the parties is detailed in

the plaint as well as in the judgment of the lower Court. Babu died on 17.08.2004. Plaintiffs are the sisters and LRs of one of the sisters of the defendant. Their plea is that the land was ancestral. Babu (deceased) suffered a decree in favour of the defendant. Their plea is that Babu had love and affection for all his daughters and had no intention to deprive any one of them. The plaintiffs claimed that the proceeds of the land were shared by all the parties to the suit. The plaintiffs came to know of the mutation in favour of the defendant and the decree and have challenged it. It was pleaded that Babu Ram was not served in the suit and he had not transferred any property and fraud had been played upon the Court and the plaintiffs were co-sharers and in possession, the decree was not registered and no valid title had been passed on to the defendant.

The defendant raised a contest and pleaded that she was rendering services to her father who was happy with her and had suffered a consent decree in her favour on 11.01.1997 and on the basis of the judgment and decree, a mutation was entered and this fact was to the notice and knowledge of the family. It was denied that the property was ancestral. It was pleaded that the plaintiffs did not render any services to the father and he was not pleased with them. It was also pleaded that Babu Ram during his life time had also executed a Will on 30.11.1998, which was registered in the office of Sub-Registrar which also refers to the fact that she had been rendering services to him.

No replication was filed. The following issues were framed:-

1. Whether impugned judgment and decree 11.01.1997 of suit no.708 and mutation no.118 and subsequent record are illegal, null and void and not binding on the existing owner-ship and possessory rights of the plaintiff? OPP
2. Whether plaintiff are owners, co-sharers in possession of 6/7 share in the suit land? OPP
3. Whether plaintiffs are entitled to the decree of permanent injunction as prayed for on the grounds mentioned in the plaint? OPP
4. Whether plaintiffs are entitled to the decree for mandatory injunction as prayed for as a consequential relief? OPP
5. Whether the suit is not maintainable in the present form? OPD
6. Whether plaintiffs have no locus standi to file the present suit? OPD
7. Whether plaintiffs have not come with clean hands and have concealed and suppressed the material facts from the court? OPD
8. Whether plaintiffs are estopped by their own act and conduct from filing the present suit? OPD
9. Whether suit is not within limitation? OPD
10. Relief.

The trial Court recorded a finding that the challenge to the decree was on the plea of concealment of fact and fraud but the plaintiffs were unable to lead any evidence and there was no substance in the plea taken by the plaintiffs. A categorical finding was recorded that

there was no evidence that the property was ancestral. It noted that the plaintiffs had only made oral statement but had led no evidence to show the ancestral nature. It was held that the consent decree did not require compulsory registration. The Will was found to be validly executed. The lower Court also noted that during the pendency of the suit one of the plaintiffs had filed an application to withdraw her suit on the ground that she was illiterate and had signed some papers without understanding the contents and defendant was living with Babu (her father) and he was happy with her services and the plaintiffs had knowledge of the decree and the Will. The lower Court recorded a finding that the plaintiffs had failed to prove their possession. The suit was dismissed.

Aggrieved with the judgment only five plaintiffs filed the appeal. Shanti who had admitted the pleas taken by the defendant was arrayed as respondent. The LRs of Santa-plaintiff no.3 were also arrayed as respondents. The findings recorded by the trial Court were affirmed. It was held that the property was not ancestral. It noted that the land had been purchased by Budhan and Babu in equal share and the property was not inherited by Babu from his father Gopal and was not ancestral in the hands of Babu and he could execute a valid Will. It was noted that Babu had died in 2004 and the plaintiffs did not approach the revenue authorities when the mutation was entered on the basis of the judgment and decree, which was to the knowledge of the plaintiffs.

Still not satisfied with the judgments of both the Courts below only four daughters of Babu have preferred this appeal.

The counsel for the appellant has argued with great eloquence and I have considered the submissions made by him but I am unable to find any merit in the appeal. The plaintiffs have taken the plea that the property was ancestral but the documents available on record show that the property had been purchased by Budhan and Babu. The property had not come to them from Gopal, their father. The plaintiff did not lead any evidence to show that the consideration used to purchase the property was out of the common funds of the family. No replication was filed by the plaintiffs with respect to the Will set up by the defendant. No issue was framed regarding the Will. Both the Courts below had correctly held that the Will was valid. The plaintiffs could not show that any fraud had been played on their father. The suit was held to be barred by limitation as the decree was passed in 1997. The mutation was affected immediately thereafter, Babu had died in 2004 whereas the suit was filed in 2011. Challenge to the decree was not made during the life time of Babu. I find no infirmity in the finding recorded by the Courts below and are affirmed.

There is no merit in the appeal and is dismissed in limine.

February 14, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No