

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

**RSA 31/2015 (O&M)  
Date of decision:27.11.2017**

Braham Singh through his LRS

.....Appellant

v.

Balkar Singh and others

.....Respondents

**Coram: Hon'ble Mr.Justice Jaswant Singh**

Present:- Mr.Pankaj Bali,Advocate for the appellant/plaintiff

**Jaswant Singh,J,(Oral).**

Plaintiff/appellant is in second appeal against concurrent findings returned by the Courts below whereby his suit for declaration and permanent injunction was dismissed by Civil Judge (Junior Division)Karnal vide judgment and decree dated 7.8.2012 and findings thereof affirmed in appeal by Additional District Judge, Karnal vide judgment and decree dated 8.8.2014.

In brief, plaintiff filed a suit for declaration and permanent injunction with the averments that parties to the suit are related to each other. One Kishni Devi was owner in possession of the suit property,fully detailed in the head note of the plaint, having inherited the same from her husband Sardar Singh, who died issueless. It was alleged that after the death of Kishni Devi, Hari Narayan, father of plaintiff-Braham Singh and defendant no.2-Kanwar Singh was only legal heir to succeed the property

left behind by Smt.Kishni Devi and after his death plaintiff and defendant no.2-Kanwar Singh. It was alleged that since Kishni Devi was issueless she was being looked after plaintiff and defendant no.2. During her lifetime Kishni Devi is alleged to have executed a Will dated 8.8.1978 in favour of defendant no.2, but lateron she cancelled the said Will. It was further alleged that on 1.6.2010 defendants i.e. his brother-Kanwar Singh nephew Balkar Singh son of Kanwar Singh and Bhabi Vidya Devi wife of Kanwar Singh alongwith others unsuccessfully tried to dispossess the plaintiff from the suit land illegally and forcibly. At that time defendants claimed that Kishni Devi had suffered a Civil court decree in favour of Balkar Singh (defendant no.1) through GPA holder Kanwar Singh (defendant no.2)and as such they were owners of the suit property in terms of the said decree. Further according to the plaintiff on pursuing the matter with revenue authorities he came to know that defendant no.2 had procured a collusive, fraudulent void, ineffective and illegal decree from the Court of Sub Judge,Karnal by playing a fraud upon Smt.Kishni Devi.

Upon notice,defendants filed written statement alleging therein that earlier one Sat Pal, a collateral of Sardar Singh had filed a suit challenging the decree in question on similar grounds on 12.8.1999 and the same was dismissed by Civil Judge (Sr.Div.)Karnal vide decree dated 30.8.2007 and findings thereof affirmed in appeal by Addl.Distt.Judge,Karnal vide decree dated 12.8.2009 whereby it was held that land in question was not ancestral and Smt.Kishni Devi had every right to execute general power of attorney in favour of Kanwar Singh and suffer the decree in favour of Balkar Singh/defendant no.1 son of Kanwar Singh (defendant no.2) herein. It was further alleged that plaintiff being real

brother of defendant no.2 had complete knowledge about the previous litigation. It was also alleged that present suit was filed by plaintiff at the instance of Sat Pal, who had previously remained unsuccessful. Ownership of the plaintiff over the suit property or his rights over the same being ancestral property were denied. Smt.Kishni through GPA having suffered a decree dated 20.8.1982 in favour of defendant/respondent no.1 was admitted. It was further averred that the said decree was perfectly legal, valid and could not be set aside on the basis of case sought to be set up by the plaintiff. The said decree was said to have been executed in pursuance of a family settlement, having been upheld in previous litigation.

On the pleadings of the parties, issues were framed. Both sides led evidence in support of their respective pleas. The Courts below on the basis of material available on record, dismissed the suit, as noticed above. Hence the present second appeal.

After hearing learned counsel for the appellant at length and with his able assistance perusing the paperbook carefully, this Court is of the considered view that the instant appeal is liable to be dismissed.

The Courts below on the basis of pleadings and evidence led in support thereof have noticed that the entire controversy revolved around civil court decree dated 20.8.1982 in favour of Balkar Singh/defendant no.1. Smt.Kishni Devi during her lifetime had challenged the said decree but that suit was dismissed in default in the year 1988. After the death of Kishni Devi, one Sat Pal vide civil suit no.242 of 1999 unsuccessfully challenged the validity of civil court decree dated 20.8.1982, as the suit filed by him was dismissed on similar grounds as raised by present plaintiff. Thus the sanctity of the decree dated 20.8.1982 was established in the previous

litigation vide Ex.D6. Plaintiff Braham Singh being collateral of Sardar Singh and Kishni Devi reasserted his rights qua the suit land after about twenty eight years by way of present suit which was not only hit by the principle of *res-judicata* per provision 11 of CPC but was also hopelessly time barred. These facts having remained undisputed formed a formidable and acceptable base to decide the present *lis* between the parties. Thus, in view of the evidence led during trial, in my opinion, both the Courts below have rightly held that the matter in issue in present suit has already been decided in previous litigation and thus the plaintiff was not entitled to reagitrate the same or to seek the relief claimed in the present *lis*.

In view of the above, in my opinion, no question of law much less substantial question of law arises for consideration in this appeal.

Dismissed.

27.11.2017  
joshi

(Jaswant Singh)  
Judge

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|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |