

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

RSA No.3224 of 2015

Date of Decision: 09.11.2017

Sarwan Singh (deceased) through LR's and others

.....Appellants

Versus

Lachman Dass and others

.....Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. A.S. Syan, Advocate,
for the appellants.

RITU BAHRI, J.

Present second appeal has been filed against the judgments of concurrent findings of facts dated 12.02.2014 and 04.03.2015 passed by the Civil Judge (Junior Division), Patiala and the Additional District Judge, Patiala respectively, whereby the suit filed by plaintiff-appellants for declaration and permanent injunction, has been partly dismissed.

Plaintiff-appellants filed the aforesaid suit to the effect that the judgment and decree dated 27.05.1995 passed by Shri Gurnam Singh, the then Sub Judge, Patiala, in civil suit No.53-T of 4.1.1993/11.02.2005, qua the rights of parties with regard to khasra No.1142(6-4), Khasra No.1443 (7-8), situated in village Seona, Tehsil and District Patiala, is illegal, null and void and has been passed by mis-representation of defendant-respondent No.1 (Lachman Dass) debarring the rights of plaintiff-appellants. It was pleaded that the plaintiffs were entitled to half share in

the entire suit property. Plaintiff-appellants have also sought relief of permanent injunction restraining defendant-respondents from interfering in their possession over half share out of the suit property illegally and forcibly. It was the case of the plaintiffs that they were illiterate and old persons. Earlier the plaintiffs, defendants and some other persons filed a civil suit No.53-T dated 4.1.1993 against Gurdev Singh and Sukhdev Singh in regard to land bearing Khasra Nos.1143, 1111, 1103, 1099, 1106 and 1107 measuring 39 bighas 10 biswas, situated at village Seona. In that suit, defendants claimed the land of their share to the extent of half share each of the parties. Defendant-Lachhman Dass, in connivance with some persons, produced a compromise Ex.C1 in the Court, which was not consented to by the plaintiffs (appellants herein). Moreover, Sarwan Singh, Ramji Lal, Darshan Singh and Sohan Singh had not signed the said compromise and on account of the objections of the parties, the compromise was not acted upon. It was further stated that again Lachhman Dass prepared a forged and fabricated compromise deed which was also not signed by the plaintiffs and they had not made any statement in this respect. The Court passed a decree dated 27.05.1995 on the basis of compromise deed Ex.CX. In real sense, there was talk between the parties to the extent of half share each of the parties and the plaintiffs are in possession of half share as per compromise and are cultivating the same till today. However, defendant Lachhman Dass came to the land of plaintiffs and threatened them that they were in possession of more than their share and he would take possession of the excess land from them. When plaintiff-appellants came to the Court and obtained copies of the previous suit, then, they came to know that Lachhman Dass, in connivance with other parties, had got produced a

compromise Ex.CX by way of concealment of facts and misrepresentation. The plaintiffs were not in excess share, rather, further inquiry revealed that the defendants were in more share than the plaintiffs. By doing the above said act, Lachhman Dass-defendant No.1 had committed fraud upon the plaintiffs. As such, compromise based judgment and decree were illegal, null & void and were liable to be cancelled/set aside. When defendant No.1 Lachhman Dass started threatening to dispossess the plaintiffs from the suit land forcibly and illegally, they filed the aforesaid suit.

Upon notice, defendant-respondent No.1 filed written statement taking preliminary objections with regard to limitation; concealment of true and material facts from the court and maintainability of the suit etc. On merits, it was stated that the plaintiffs were well known to the facts of the case and present suit has been filed only to harass defendant No.1, who is an 80 years old person. It was further averred that if, any document was produced in the previous suit by him, the same was legal and correct, as he had never cheated any person in his life time. Both the parties were bound by the civil Court decree passed way back in the year 1995. It was claimed that defendant No.1 was absolute owner of the land and was working there being owner in possession. It was denied that he ever threatened the plaintiffs in any manner as alleged by them. The suit of the plaintiffs was also barred by time. Rest of the averments mentioned in the plaint were denied and prayer for dismissal of the suit had been made.

Harmesh Singh-defendant No.2 adopted the written statement filed by the defendant No.1. Ujagar Singh-defendant No.3 filed a separate written statement admitting the claim of the plaintiffs in toto.

Replication was filed by the plaintiffs, wherein, averments

made in the plaint were reiterated and those of the written statement of contesting defendants were denied. During the pendency of the proceedings, plaintiff No.1 died and thereafter, his LR's were impleaded vide order dated 18.12.2013. From the pleadings of the parties, following issues were framed by the learned lower Court vide order dated 4.6.2011 :-

1. Whether the judgment and decree dated 25.5.1995 passed in civil suit No.53-T of 4.1.1993/11.02.2005 qua the rights of the parties with regard to khasra No.1142(6-4), Khasra No.1443(7-8) of village Seona, Tehsil and District Patiala, is illegal, null and void, result of misrepresentation of defendant No.1?OPP
2. Whether the plaintiffs are entitled to half share of the suit property?OPP
3. Whether the plaintiffs are entitled to permanent injunction as prayed for?OPP
4. Whether the suit is time barred?OPD
5. Whether the plaintiffs have not come to the court with clean hands?OPD
6. Whether the plaint does not disclose any cause of action?OPD
7. Whether the suit is not maintainable?OPD
8. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment, preferred by plaintiff-appellants, also met the same fate. Hence, the present appeal.

After hearing learned counsel for the appellants, this appeal deserves to be dismissed.

A perusal of the impugned judgments shows that the decree dated 27.05.1995 was passed on the basis of compromise, Ex.P5 and this compromise deed was carrying the thumb impressions of plaintiffs (appellant herein) as well as defendants (respondents herein). They were party to the compromise. However, they never challenged the said decree till 14.11.2008. Even before the trial Court, no attempt was made to get the thumb impression examined from any Handwriting and Fingerprints Expert.

The oral statement of the plaintiffs that they did not thumb mark or signed the said compromise has been rejected as a ground to set aside the said decree. Since the plaintiffs were party to the compromise and they had thumb marked the same, their plea that they came to know about the said decree in the year 2008 has been rightly rejected by the Courts below. Moreover, suit of the plaintiffs was also hopelessly time barred.

Having examined the impugned judgments, this Court is of the view that suit of the plaintiff-appellants has been rightly dismissed by the Courts below and no illegality, much less perversity, has been found therein. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

09.11.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No