

RSA No. 3799 of 2015 (O&M)

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

RSA No. 3799 of 2015 (O&M)

Date of Decision: 31.8.2017

Badamo and another

.....Appellants

Vs.

Phool Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Gopal Sharma, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Plaintiffs are in regular second appeal against the concurrent findings of facts, recorded by both the learned courts below, whereby their suit for declaration with consequential relief of permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 28.2.2012 and their first appeal was also dismissed by the learned District Judge, vide his impugned judgment and decree dated 5.2.2014.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that plaintiffs were the daughters of Sanwal Singh son of Sheo Narain resident of Basduda. The said

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Sanwal Singh was owner in possession to the extent of 1/16 share in the total land measuring 219 kanals 13 marlas comprised in Khewat No.98 Khatoni No.136 rectangle No.19 Killa No.21 (8-2), rectangle No.20 Killa Nos.14/2 (5-0), 15 (3-10), 16 (7-1), 17 (8-0), 18 (5-6), 24/2 (4-0), 25 (8-0), rectangle No.77 Killa Nos.17/2 (6-0), 18 (8-0), 24 (7-11), 25/1/1 (4-14), rectangle No.88 Killa Nos.4 (8-0), 5/2 (8-0), rectangle No.88 killa Nos.6 (8-0), 7(8-0), 8(6-2), 13/2(3-18), 14(8-0), 15(8-0), 16(8-0), 17(9-14), 25 (8-0), 27(0-13), rectangle No.89 killa Nos.1/1/1 (2-10), 10/2 (8-6), 11(8-0), 12/1 (6-2), 18/2/2/1 (3-10), 19 (8-0), 20 (8-0), 21 (8-0), 22/1 (4-0), rectangle No.73 killa No.12/2/1 (3-14) in village Basduda. Claiming that he died on 6.4.1998 leaving behind them as the only class-I heirs the plaintiffs filed suit, pleading, inter-alia, that after the death of Sanwal Singh, they have been in cultivating possession of his share. Since they were in need of loan, they collected the revenue documents through Rohtash and came to know that the land of the share of their father was being shown to be owned by the defendant. On this, they collected more documents including mutation from Halqa Patwari and found that the ownership of the land had been changed in favour of the defendant vide mutation No.1171 on the basis of judgment dated 31.1.1996 passed in civil suit No.854.

The judgment dated 31.1.1996 was sought to be challenged on the grounds that Sanwal Singh used to love the plaintiffs and except the plaintiffs, nobody used to look after him, therefore, there was no reason for him to have suffered decree in favour of the defendant. It was further pleaded that no family settlement ever took place between Sanwal Singh and the defendant but taking advantage of his innocence, they fraudulently prepared the documents and the decree. It was next pleaded that in order to

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usurp the property of Sanwal Singh, defendant had filed civil suit No.632 of 28.10.1995 which was dismissed on 8.1.1996 but concealing that fact suit No.854 was filed. In the end, it was asserted that the judgment dated 31.1.1996 was not the mental and conscious act of Sanwal Singh and a consequence relief for declaration to the effect that the judgment and the revenue entries based thereupon were null and void with consequential relief of injunction restraining the defendant from interfering peaceful possession of the plaintiffs was sought. Alternatively, it was pleaded that in case the plaintiffs failed to prove their possession or the defendant was able to wrest it during pendency, they be granted possession.

Upon notice, defendant put appearance and filed his contesting written statement, raising more than one preliminary objections. Plaintiffs filed their replication reiterating their stand taken in the plaint. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the decree dated 31.1.1996 and mutation No.1171 sanctioned on that basis and subsequent revenue records are illegal, null and void? OPP
2. Whether the plaintiffs are equal owners in possession of the suit property? OPP
3. Whether the plaintiffs are entitled to get the revenue records corrected in their favour? OPP
4. Whether the plaintiffs are entitled to injunction as prayed for? OPP
5. Whether the suit of the plaintiffs is not maintainable in the present form? OPD

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6. Whether the plaintiffs have no cause of action to file the present suit? OPD

7. Whether the civil court has no jurisdiction to try the present suit? OPD

8) Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD

9) Whether the suit is barred by limitation? OPD

10) Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiffs have failed to prove their case for want of cogent and sufficient evidence. Accordingly, suit of the plaintiffs for declaration with consequential relief of permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 28.2.2012. Feeling aggrieved, they filed their first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 5.2.2014. Hence this regular second appeal at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants-plaintiffs.

Appellants-plaintiffs raised two issues namely; i) suit property was ancestral in the hands of Sh. Sanwal Singh son of Sheo Narian; and ii) mutation No. 1171 was based on fraud and misrepresentation. It goes without saying that appellants being the plaintiffs, onus was on them to prove their pleaded case, by leading cogent and convincing evidence. Taking the first issue first, plaintiffs-appellants failed to produce on record any

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relevant and cogent evidence, so as to prove the suit property to be ancestral in the hands of late Sh. Sanwal Singh.

Mere assertions by the plaintiffs in their plaint will not be sufficient to decree their suit in the absence of relevant and cogent evidence. Although the relevant revenue record would be available at the disposal of the plaintiffs to prove their stand taken in their plaint that the suit property was ancestral in the hands of their father-Sh. Sanwal Singh but they failed to bring on record said evidence, for the reasons best known to them.

It is the settled proposition of law that every property is to be treated as non-ancestral property unless it is proved to be ancestral property. In such a situation, plaintiffs were bound to fail. That is what has been held by both the learned courts below by recording their concurrent findings of facts. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

Coming to the second issue, it was easy to raise the plea of fraud, which was raised by the plaintiffs-appellants. However, the plea of fraud is to be proved like criminal charge. In the case in hand, plaintiffs-appellants miserably failed to prove their plea of fraud by bringing on record relevant and convincing evidence. Under these circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

It was the pleaded and argued case on behalf of the plaintiffs that during the last two years of his life, Sh. Sanwal Singh was staying with the plaintiffs. Had it been so, it would have been very easy for the plaintiffs

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to get the decree dated 31.1.1996 challenged at the hands of late Sh. Sanwal Singh himself. It is a matter of record that after having suffered the judgment and decree dated 31.1.1996, the same were not challenged by late Sh. Sanwal Singh during his lifetime.

Similarly, mutation No. 1171 which was entered and sanctioned on the basis of decree dated 31.1.1996 has also gone unchallenged before the revenue authorities. Further, suit of the plaintiffs-appellants was also rightly held to be time barred by both the learned courts below, while deciding issue No.9. In view of the matter, no fault can be found with the concurrent findings of facts recorded by both the learned courts below in their respective impugned judgments and the same deserve to be upheld, for this reason as well.

Another argument raised by learned counsel counsel for the appellants that decree dated 31.1.1996 required registration has been duly considered but the same has been found wholly misplaced for the reason that since the decree was based on a family settlement, it does not require any registration. No contrary evidence was brought on record at the hands of the plaintiffs-appellants. In view of these undisputed facts and circumstances of the case, it is unhesitatingly held that the learned courts below were well justified to record their concurrent findings of facts on this issue as well and the same deserves to be affirmed and are accordingly affirmed.

Before arriving at a judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 14, 14 and 26 of its impugned judgment, which deserve to be noticed here, read as

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under:-

“To my mind, none of the above grounds taken singularly or collectively will make out a case of fraud so as to warrant the setting aside of the judgment decree dated 31.1.199. In Lichhami Devi and others Vs. Smt.Bharpai and others, 2011 (3) PLR, the Hon’ble High Court of Punjab and Haryana has held that a consent decree can be challenged in subsequent suit on the ground of fraud and misrepresentation but not on the ground that the facts pleaded in the suit leading to the consent decree were incorrect. It was further held that the court in subsequent suit cannot go behind the earlier decree and find out as to whether it was passed on right or wrong facts. Applying the ratio to the facts in hand, even if it is admitted, for a pause, that some wrong facts were mentioned in the plaint Ex.P1 which led to the consent decree, this is not stage to go behind the decree which has settled the rights of the parties. On the same analogy it will be too late and unjust to set aside the decree simply on the ground that the plaint Ex.P1 did not contain a statement as required by order 7 rule 1 (J) of the Code of Civil Procedure. It was for the court concerned to see that there was the requisite statement. Had it been noticed, the plaintiff would have been returned for doing the needful. 15. Not much capital can be made out of the fact that in the plaint Ex.P1 and Ex.P10 no date of family settlement was mentioned and different dates of cause of action were stated. This would at the most amount to stating wrong facts. Similarly discrepancy between the dates of family settlement (in written statement as January 1995 and in his sworn deposition as 1990) cannot be made basis, at this stage, to set aside the decree. It is reiterated that the decree can be set aside only on the ground of fraud and no fraud can be inferred from these discrepancies.

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In the instant case, the case of the plaintiffs is that they came to know about the fraud in Feb. 2006 when they obtained

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copy of revenue record through Rohtash son of Bimla. Learned lower court rightly dismissed this plea that the said Rohtash has not stepped into the witness box and that if Sanwal Ram was residing with the plaintiffs, it cannot be believed that they were not aware of the decree suffered by him. Learned lower court rightly pointed out that the plaintiffs being the only legal representatives of Sanwal Ram, it was for them to have approached the Revenue Authorities at least after some of his death for getting their names incorporated in the revenue record. Sanwal Ram passed away in 1998. The plaintiffs never approached the revenue authorities for correction of entries in their favour. This is strange. No fault can be found with the findings recorded by the learned lower court that the plaintiffs knew the factum of decree much before Feb. 2006. Since their plea that they came to know about the decree in Feb.2006 is not credible, the suit has to be treated to be beyond limitation. The findings of learned Civil Judge on issue No.9 are, therefore, confirmed. ”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the judgments passed by both the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a 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 regard, reliance can be placed on the law laid down by the Hon’ble Supreme Court in **Naryanan Rajendran and another Vs.**

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Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286 and Santosh Hazari Vs. 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 present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

31.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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