

RSA No. 5825 of 2016 (O&M)

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

**RSA No. 5825 of 2016 (O&M)
Date of Decision: 18.4.2017**

Bhopal Singh and another

.....Appellants

Vs.

Rohtan through LRs and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Gaurav Chopra, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant unwarranted litigation is amongst the brothers as well as their children qua their right of inheritance, in the estate of their common ancestor namely late Sh. Ganni son of Balwant Singh. Plaintiffs-respondents were claiming their share in the joint unpartitioned suit property, which was ancestral in the hands of late Sh. Ganni whereas defendants-appellants were claiming extra share to the exclusion of share of the plaintiffs, in the undivided and joint suit property.

Feeling aggrieved against the concurrent findings of facts recorded by both the learned courts below, whereby first appeal of the defendants-appellants was dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 2.8.2016 and the impugned judgment and decree dated 8.9.2014 of the learned trial court, decreeing the suit of the plaintiffs-respondents, were upheld, unsuccessful

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defendants have approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned first appellate court in para 2, 3 and 4 of its impugned judgment, are that plaintiffs No.1 and 2 and defendant No.3 along with their deceased brothers namely Mahavir Singh and Jasmal Singh are the legal heirs of late Sh.Ganni son of Balwant, r/o village Kheir Khurd and inherited the estate of late Sh.Ganni. It was averred that Sh.Mahavir Singh, real brother of plaintiffs No.1 and 2 and defendant No.3 died issueless and intestate on 4.9.1980 and a long litigation between the parties went on in the civil court. Civil suit No. 401 was decided by the court of Smt.Anita Chaudhary, learned Senior Sub Judge, Faridabad on 9.8.1990 titled as 'Rohtan etc. Vs. Bhim Singh' and Civil Appeal No. 36/13 decided on 22.3.1991 titled as 'Bhim Singh and Bhopal Singh Vs. Rohtan Singh etc.' and by virtue of the said judgments and decrees, plaintiffs No.1 and 2 and defendant No.3 were held to succeed the share of Mahavir Singh-deceased to the extent of 1/3rd share each jointly in equal share in the estate of Mahavir Singh and defendant no.1 was not held to be the adopted son of late Sh.Mahavir Singh s/o Sh.Ganni r/o village Kheri Khurd and was not entitled to the estate of Mahavir Singh nor the plaintiffs no.2 and 7 were held to succeed the inheritance of deceased Mahavir Singh.

It was further submitted that defendants No.1 and 3 knowing well, conspired to play fraud on the plaintiffs and the Government entries, in conspiracy with each other and the revenue staff and defendant No.1 impersonated as adopted son of Mahavir Singh son of Sh.Ganni, signed and executed sale deed dated 28.7.2005 in favour of defendant No.2 in conspiracy with defendant No.3 and the aforesaid sale deed was got

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registered at Sr.No. 5942 in additional Book No.1 on 28.7.2005 in the office of Sub Registrar, Faridabad. Since the revenue authorities were failed to correct the revenue entries as per judgment and decree held in by the civil courts, defendant No.1, on the basis of said wrong entries in the jamabandis, were able to execute the sale deed in respect of the suit land by playing fraud and the revenue authorities failed to correct the revenue entries as per the judgments by civil courts and was dragging the correction on the ground that the defendants had informed the Patwari that they had gone in appeal and then in S.L.P. and till decision came from the higher court, they were unable to change the entries as the defendants had intentionally never supplied the correct information and wrong entries were going on in the revenue records. The revenue authorities were saying that as the entries appeared in the jamabandi till 2002-2003, they could correct the entries by the orders of the civil court and as such the plaintiffs approached the court.

The sale of the land of deceased Mahavir Singh son of Ganni vide sale deed dated 28.7.2005 comprising of khewat/khata no.13, khatoni no.22, khewat no.14, khatoni no. 23 and 27 and khewat no.15, khatoni no.28 to 31 and khewat no.84, khatoni no.113-114 as per jamabandi for the year 2002-2003, Rect. No.7, killa no.13/2 (4-0), Rect. no.8, killa no. 24/2 (2-19), Rect. no.7, killa no.24 (8-0), Rect. No.7, killa no.13/2 (4-2), 18(8-0), 11/2/1 (1-9), 11/2/3 (0-1), 11/2/2 (1-1), Rect. No.7, killa no. 22(7-3), 19/1(4-0), 20(3-15), 11/1 (4-17), 17/2(4-0), 19/2(4-0) and rect. no.6, killa no.15(0-5), rect. no. 7, killa no.12/1 (1-7), 12/2 (6-13), 21(0-5), 23(8-0), rect. no.8, killa no.17/2(1-17), 25/1(0-19) and 24/1(4-10) and khewat/khata no. 35/60, khasra no.30 measuring 0 kanal 13 marlas in total measuring 61 kanals 14 marlas to the extent of 1/14th share i.e. 5 kanals 17 marlas. Defendant No.1 intentionally

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and knowingly that he was not the adopted son of deceased Mahavir Singh sold the above said property to defendant No.2 impersonating as the adopted son of Mahavir and caused injuries to the rights of the plaintiffs No.1 and 2 and defendant No.3.

Further, plaintiffs No.1 and 3 made written complaint to the police through three registered letters and the matter was under investigation and defendant No.2 being the nearest relative of defendants Nos.1 and 2 and well aware of the facts of the earlier case intentionally conspired with defendants No.1 and 3 and was out to sell the purchased property in order to cause damage to the plaintiffs. Hence, the plaintiffs have filed suit for declaration.

Having been served in the suit for declaration, defendants No.1 to 3 appeared and filed their joint 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 plaintiffs are entitled for the decree of declaration as prayed for ? OPP
2. Whether the plaintiffs are entitled for the decree of mandatory injunction as prayed for ? OPP
3. Whether the plaintiffs have no locus standi and cause of action to file the present suit ? OPD
4. Whether the suit of the plaintiff is not maintainable ? OPD
5. Whether the suit is bad for mis-joinder of necessary parties ? OPD.
6. Relief.

Vide order dated 14.1.2012 an additional issue was framed as under:

1. Whether the applicant is an adopted son of the

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deceased ? OPP

With a view to prove their pleaded case, 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, learned trial court came to the conclusion that plaintiffs have duly proved their case, by leading cogent and convincing evidence. Accordingly, their suit was decreed vide impugned judgment dated 8.9.2014. Defendants-Bhopal Singh and Suresh Singh-present appellants filed their first appeal, which also came to be dismissed by the learned first appellate court, vide impugned judgment and decree dated 2.8.2016. Hence this regular second appeal at the hands of defendants.

Heard learned counsel for the appellants.

It has gone undisputed before this Court that plaintiffs and defendants No.3 were real brothers. Mahavir and Jasmal were pre-deceased brothers of plaintiffs and defendant No.3. All these were sons of late Sh. Ganni son of Sh Balwant. All the brothers, alongwith their father, constituted a joint hindu family. It is also not in dispute that Mahavir-brother of plaintiff and defendant No.3 died intestate and issueless on 4.9.1980.

Defendant-appellant No.1 namely Bhopal Singh s/o Bhim Singh claimed himself to be the adopted son of Mahavir-pre-deceased brother of his father Bhim Singh. However, this alleged adoption came to be declared null and void by the court of competent jurisdiction vide judgment and decree dated 22.3.1991 which attained finality. The learned civil court further held the plaintiffs and defendant No.3 were entitled for their

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respective shares in the estate of their brother-Mahavir Singh to the extent of 1/3rd share each. Further, defendant No.1-appellant namely Bhopal Singh, on the basis of the abovesaid forged adoption deed, procured factually incorrect and patently illegal entries in his name in the relevant revenue record.

Playing smart on the dint of these factually incorrect and misleading revenue entries, on the basis of abovesaid forged adoption deed, appellant No.1 executed sale deed in the year 2005 qua share of Mahavir in favour of his co-defendant-appellant No.2 herein. Plaintiffs claimed their 2/3rd share in the estate of Mahavir and sought cancellation of abovesaid sale deed by appellant-defendant No.1 in favour of appellant-defendant No.2.

It is also pertinent to note here that the genuine claim of the plaintiffs was contested by defendant No.1-Bhopal Singh on the ground of adverse possession and limitation, whereas appellant-defendant No.2 contested the claim of the plaintiffs on the ground of alleged bonafide purchase. It goes without saying that as and when a plea of adverse possession is set up by a party, it would amount that ownership of other side is pre-supposed. However, it had become crystal clear that both the appellants herein colluded with each right from day one, proceeding on their common malafide intention to grab the share of plaintiffs in the estate left by late Sh. Mahavir, who was brother of plaintiffs as well as defendant No.3. Having said that, this Court feels no hesitation to conclude that claim putforth by the plaintiffs was factually correct and legally justified and their suit for declaration was rightly decreed by both the learned courts below.

On the other hand, claim putforth by the defendants-appellants

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herein was not justified either on facts or in law. They had no case in equity as well. It is so said, because the appellant No.1 was trying to grab the share of his cousins. Since both the learned courts below have rightly appreciated true facts of the case, before passing the impugned judgments and decrees recording their concurrent findings of facts, the same deserve to be upheld.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as different High Courts, including this Court:-

Shanti Budhiya Vesta Patel and others Vs. Nirmala Jayprakash Tiwari and others, 2010 (5) SCC 104 (SC)

Kammana Sambamurthy VS. Kalipatnapu Atchutamma and others, 2001 AIR (SC) 103 (SC)

Nachattar Singh and others Vs. Surjit Singh and others, 2012 (2) PLR 557 (P&H)

Kartar Kaur Vs. Kewal Singh, 1997 (2) RCR (civil) 483 (P&H)

Nayankumar Rajnikaben Trivedi Vs. District Education Officer, Anand and others, 2004 AIR (Gujarat) 53 (Gujarat H.C.)

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below would make it crystal clear that the learned trial court as well as learned first appellate court were well within their jurisdiction to pass the impugned judgments and decrees. Entire case of the appellant-Bhopal Singh was based on a forged and fabricated adoption deed, claiming himself to be adopted son of Mahavir. This adoption deed was declared null and void by the learned court of competent jurisdiction. The decree passed by the learned trial court was upheld by the learned Additional District Judge, vide judgment and decree dated

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22.3.1991, thereby dismissing appeal of appellant No.1. This judgment and decree dated 22.3.1991 had attained finality between the parties.

Further, incorrect revenue entries in favour of Bhopal Singh-appellant No.1, on the basis of forged and fabricated adoption deed, will not confer any title on him. This was the reason that after the death of late Sh. Mahavir, Bhopal Singh-appellant took a complete somersault claiming his adverse possession on the property left behind by late Sh. Mahavir. However, neither Bhopal Singh was adopted son of late Sh. Mahavir, nor he was natural son of Mahavir, as Mahavir died issueless, because of which he was not having any right to sell the suit property in favour of his co-defendant-appellant No.2. Defendant-appellant No.2 cannot be held to be a bonafide purchaser by any stretch of imagination. It is so said, because once the vendor himself was not competent, he would be disqualified to pass on any title in favour of vendee-defendant No.2-Suresh Kumar.

It is equally important to note here that since sister of defendant No.1 was married with appellant-defendant No.2, appellant No.2-Suresh Kumar could not have claimed any ignorance about the controversial title of his vendor who was none else but his own brother-in-law. Under these circumstances, it can be safely concluded that appellants were not bonafide litigants and because of this reason, they do not deserve any sympathy from this Court as well.

Before arriving at its just conclusion, learned first appellate court rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in correct perspective. Relevant and cogent findings recorded by learned Additional District Judge in para 15 to 17 of the impugned judgment, which deserve to be noticed here, read as

under:-

“I have duly considered the aforesaid contentions. The plaintiff has filed a suit for declaration stated that plaintiffs and defendant no.3 are real brothers with pre-deceased brothers Mahavir and Jasmal. All constituted Joint Hindu family. The defendant no.1 claimed himself to be adopted son of pre-deceased brother of plaintiff Mahavir who died intestate and issueless on 4.9.1980. This adoption was declared null and void by court of civil court vide order dated 22.3.1991 which was confirmed and attained finality with efflux of time. The plaintiffs and defendant no.3 were held entitled for share of deceased Mahavir Singh and they were having 1/3rd share each in the share of Mahavir Singh by the civil court. It is further alleged that the defendant no.1 on the basis of forged adoption deed procured wrong entries in the revenue records which stands in the name of defendant no.1. On the basis of these revenue records and wrong entries, the defendant no.1 has executed sale deed in 2005 qua the share of Mahavir in favour of defendant no.2. The plaintiff being entitled of 2/3rd share of Mahavir sought cancellation of the sale deed executed by defendant no.1 in favour of defendant no.2.

The claim of plaintiffs are contested by defendant no.1 on the ground mainly of adverse

possession and limitation. The defendant no.2 contested the claim of plaintiffs on the ground of bonafide purchase.

16. It is admitted fact that the civil court vide decree dated 22.3.1991 held plaintiffs and defendant no.3, entitled for the share of Mahavir. Thus, there is no dispute left between the parties qua the share of Mahavir. It is further admitted fact that the judgment attained finality with the efflux of time and since 1991 the said decree neither altered nor its execution was stayed. Now the question arises about the validity of sale deed executed by defendant no.1 in favour of defendant no.2 in the year 2005. The defendant no.1 claimed to be owners of suit property and pleaded that his possession over suit property is hostile qua the rights of plaintiffs. The claim of defendants is not based on any document rather based only on possession and revenue entries.

17. In Tribhuwan Shanker Vs. Amrit Lal, 2014(2) SCC 788, the Hon'ble Supreme Court has observed that a party claiming adverse possession must prove that his possession is 'nec vi, nec calm, nec precario' i.e. peaceful, open and continuous. It is further observed that when a person in adverse possession has defected his title it only means this. Since the person who had the right of possession but allowed his right to be extinguished by his in action, he cannot obtain the

possession from the person in adverse possession, and, as its necessary corollary the person who is in adverse possession will be entitled to hold his possession against the other not in possession, on the well settled rule of law that possession of one person cannot be disturbed by any person except one who has a better title. In the present case, the plaintiffs and defendant no.3 are real brothers whereas defendant no.1 is son of defendant no.3. They all are successor of one person namely Ganni father of plaintiffs and defendant no.3 and grandfather of defendant no.1. Thus, the possession of defendant no.1 is nothing more than possession of a co-sharer. It is settled proposition of law that every co-sharer has possession of every part of property. The defendant no.1 no where pleaded nor proved this fact that he is in exclusive possession of suit property. Thus, the possession of defendant no.1 is not admitted to be exclusive possession over the suit property. Defendant no.1 further did not prove this fact that the possession of defendant no.1 is hostile qua plaintiffs.

Once the plaintiff and defendant no.3 were held entitled for the share of pre-deceased brother Mahavir, thereafter, the defendant no.1 failed to allege and prove how he came into possession of the suit property. In absence of any pleadings and evidence, it can be reasonably presumed that through co-ownership of

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defendant no.3, defendant no.1 is in possession of suit property. Thus, the possession of defendant no.1 is limited to the possession of co-sharer.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments rendered by 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. 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.

(RAMESHWAR SINGH MALIK)
JUDGE

18.4.2017
Ak Sharma

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