

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

***RSA No.4493 of 2015 (O&M)***  
Date of Decision: 08.02.2017

Sat Narayan

....Appellant

Versus

Smt. Kalwati since deceased through LRs and others

....Respondents

***BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY***

Present:- Mr. Anil Kumar Ahuja, Advocate  
for the appellant.

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**DAYA CHAUDHARY, J.**

**C.M. No.10788-C of 2015**

This application has been moved under Order 22 Rule 4 read with Section 151 CPC for impleading the legal representatives of deceased Smt Kalawati (respondent No.1).

Legal representatives of Smt. Kalawati (respondent No.1) are mentioned in para No.2 of the application. It is also mentioned that there are no other legal representatives of deceased-Smt. Kalawati except those mentioned in para No.2 of the application. The application has been supported by an affidavit.

C.M is allowed as per grounds mentioned therein subject to all exceptions and legal representatives of deceased-Smt. Kalawati (respondent No.1) as mentioned in para No.2 of the application are brought on record.

***RSA No.4493 of 2015***

Appellant-plaintiff Sat Narayan has filed the present appeal to challenge the judgment and decree dated 11.02.2011 passed by Civil Judge (Junior Division), Hisar, whereby, the suit filed by him for declaration was dismissed and judgment and decree dated 26.03.2015 passed by Additional District Judge, Hisar, whereby, the appeal filed by the appellant was also dismissed.

Plaintiff-appellant Sat Narayan filed a suit for declaration stating therein that he was owner in possession of agricultural land measuring 106 K 14 M comprised in Khewat Nos.196 and 197, Khatauni Nos.295/296, situated in Village Kharkhari Tehsil and District Hisar by way of succession and by way of judgment and decree dated 17.03.1992 suffered by defendant No.2-Smt. Natho (now deceased) in Civil Suit No.1256/1993 titled as ***Sat Narain vs Smt. Natho*** dated 02.03.1994 based on family settlement. As per claim of the plaintiff-appellant, Ram Lal was not having any male child except two daughters i.e Smt. Kalawati and Smt. Natho (defendants No.1 and 2) in the Civil Suit. Plaintiff-appellant is the natural son of Smt. Kalawati i.e defendant No.1 and Ram Sarup. When plaintiff-appellant was about three years old, he was given in adoption to Ram Lal and his wife, who were maternal grandparents of the plaintiff and all the ceremonies of adoption were performed. In the suit, it was mentioned that the land, in dispute was ancestral property of Ram Lal as some of the land was ancestral and some land was purchased by the funds of the Joint Hindu Family. After death of Ram Lal on 06.07.1998, there were three legal representatives i.e plaintiff being son and defendants No.1 and 2 (daughters). During the life time of his father-Ram Lal, the suit land was in

his possession and he was cultivating the land. After death of Ram Lal, the mutation was sanctioned in the name of defendants No.1 and 2. Defendant no.1, who is natural mother and sister of the plaintiff, suffered the decree in favour of plaintiff about half share of the suit land. Similarly, defendant No.2, who is the sister of the plaintiff and natural Mausi (mother's sister) also suffered the decree in favour of the plaintiff in respect of half share. On the basis of judgment and decree, the mutation was sanctioned.

As per case of the appellant, the whole of the land was given by Ram Lal to the plaintiff because defendants No.1 and 2 are the daughters of Ram Lal and they were duly compensated. The plaintiff was owner in possession of suit land during life time of his father-Ram Lal. Defendant nos.2 and 3 had no title or interest in the suit land during life time of Ram Lal and after suffering of the decrees in favour of the plaintiff. The Judgment and decree dated 03.03.1994 suffered by Smt. Natho in favour of defendants Ram Rattan, Vijay and Ashok Kumar on the basis of judgment and decree were stated to be illegal, wrong, null and void and it was a result of collusion between defendants No.2 to 5. The suit filed by the plaintiff-appellant was contested and ultimately, it was dismissed vide judgment and decree dated 11.02.2011.

Aggrieved by judgment of trial Court, the plaintiff-appellant filed an appeal, which was also dismissed.

The appellant, after losing his case before the two Courts below, filed the present Regular Second Appeal by raising various grounds.

Learned counsel for the appellant submits that the defendant-respondents were having no right to challenge decree dated 02.03.1994 suffered by defendant No.2 in favour of plaintiff. Defendants no.3 to 5 have

alleged in the plaint that they were owner in possession of share of Smt. Natho by way of judgment and decree dated 03.03.1994, whereas, the said judgment was null and void as defendant No.2 was not owner of land on the day of alleged decree and the said decree was not registered. The compromise Exhibit C-1 was illegal and unlawful. Defendants no.3 to 5 were having no pre-existing right and there could not be any family settlement in any manner. Moreover, there was no necessity to enter into any compromise, in case, they were declared owners of the suit land. The purpose of respondent-defendants was to grab the land of the plaintiff. Learned counsel for the appellant further submits that the Courts below have wrongly held that it is not proved on record that the plaintiff is an adopted son of Ram Lal. The land was ancestral and plaintiff was the adopted son of Ram Lal as he was not having any male child. The adoption has not even been denied by the other side. It was proved from statement of PW-3 Jai Lal, who was Ex. Sarpanch of Village Kharkhari, Tehsil and District Hisar, that the plaintiff was taken in adoption by Ram Lal. At the end, learned counsel for the appellant submits that the decree dated 03.03.1994 was based upon fraud, misrepresentation and the same was null and void. Both the Courts below have not taken into consideration the statements of the witnesses and the adoption deed and a wrong finding has been given, which is not based on proper appreciation of evidence.

Heard the arguments of learned counsel for the appellant and have also perused the judgments of both the Courts below.

The following issues were framed by the trial Court ;

- 1. Whether the plaintiff is owner in possession of the land in dispute as detailed and described in the head note of the plaint vide judgment and decree as alleged ? OPP*

- 2. If issue No.1 is proved whether the judgment and decree dated 03.03.1994, judgment and decree dated 08.11.1994, judgment and decree in Civil Suit No.1034 of 1994 and judgment and decree in Civil Suit No.319 of 1995 are wrong, illegal, null and void and mutation if any sanctioned on the basis of those judgments and decrees are also wrong, illegal, null and void and mutation No.1303 dated 06.11.1986 is also wrong, illegal, null and void and the plaintiff is entitled for permanent injunction restraining the defendant from interfering in the suit land in any manner whatsoever and from alienating the suit land in any manner whatsoever? OPP*
- 3. Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD*
- 4. Whether the suit is time barred? OPD*
- 5. Whether the suit is not maintainable in the present form? OPD*
- 6. Relief*

The findings recorded by the trial Court are reproduced as under :-

“ After hearing both the parties at length, it is seen that plaintiff has claimed himself to be owner in possession of the agricultural land measuring 106 K 14 M compromised in Khewat No.196 and 197, Khatauni No.295/296, situated in Village Kharkhari, Tehsil and District Hisar by way of succession and by way of judgment and decree dated 17.03.1992 suffered by defendant No.2 in favour of the plaintiff in Civil Suit No.1256/1993 titled as Sat Narain vs Smt. Natho dated 02.03.1994 and he has further claimed that judgment and decree dated 03.03.1994 and 08.11.1994, are illegal, null and void and he has also challenged the further judgment and decrees and mutations based on

judgment and decrees in favour of the defendants, but is seen that mutation of inheritance was sanctioned in favour of Kalawati, Smt. Natho and Ram Lal which is Ex.DX. Now, the plaintiff has claimed that judgment and decree dated 02.03.1994, suffered by defendant No.2 in favour of the plaintiff, is binding on the parties and judgment and decree dated 03.03.1994, is illegal, null and void but it is seen that parties had arrived at a compromise which is Ex. DW2/E, in which they had requested for cancellation of decree and by way of order dated 08.11.1994, the suit of the plaintiffs, who are defendants in the present case, was decreed in terms of compromise Ex.C1 and it was declared that judgment and decree dated 02.03.1994, passed in case of “Sat Narain vs Smt. Natho” is not binding on the rights of the plaintiffs who are defendants in the present case. As such, now the same cannot be considered to be valid when the same was cancelled and judgment and decree dated 03.03.1994, 08.11.1994 and 01.03.1995 cannot be declared to be illegal and null and void, the same being passed in accordance with law and no evidence has been produced by the plaintiff to prove as to how the alleged judgment and decree dated 03.03.1994, 08.11.1994, 01.03.1995 judgment and decree in civil suit No.1034 of 1994, are invalid and when the mutations are sanctioned on the basis of these decrees, the same cannot be called to be illegal, null and void and the plaintiff cannot be declared to be owner in possession of the land in dispute and both these issues are decided against the plaintiff.”

Similarly, the findings recorded by the lower Appellate Court are reproduced as under :-

“15. In view of above discussion, the plaintiff has failed to prove on record that impugned decree

dated 08.11.1994 or any other impugned decree, mentioned above, is liable to be set aside. Accordingly, the mutations/revenue record entered and sanctioned on the basis of impugned decree are not liable to be set aside. In view of aforesaid decree dated 08.11.994, the plaintiff had left with no right in the suit land, detailed in the head note of the plaint, to the extent of  $\frac{1}{2}$  share in respect of which he suffered the decree dated 8.11.1994 and accordingly, the plaintiff has no right to challenge any decree or any alienation in respect of said half share by defendant no.2 in favour of any of the defendants No.3 to 5, Vijay, Ashok and Ram Rattan or by any of the defendants No.3 to 5 in favour of their subsequent vendees i.e respondents Smt. Bhagoti, Smt. Sarla and Smt. Manju.

16. Keeping in view the above discussion, this Court is of the view that learned trial Court has rightly decided issues No.1 and 2 against the plaintiff and rightly dismissed the suit of the plaintiff vide judgment and decree under challenge dated 08.11.1994. This Court affirms the findings of learned trial Court on issues No.1 and 2. Accordingly, there is no merit in the present appeal and hence, the same is hereby dismissed with costs. Decree sheet be prepared accordingly. Record of learned trial Court along with copy of this judgment be sent back. File be consigned to records.”

On perusal of evidence available on the file as well as findings recorded by both the Courts below, it is apparent that the suit was filed by the plaintiff-appellant on 13.03.2002 and Civil Suit No.626-C of 1994 titled as “Ram Rattan and others vs Sat Narain” was decreed on 08.11.1994, wherein, the plaintiff was also party. The present suit was filed by the plaintiff after delay of more than eight years, which was hopelessly time barred. The plaintiff also failed to prove on record the impugned decree

dated 08.11.1994. As per claim in the plaint, he was having one share in respect of decree dated 08.11.1994. It has specifically been mentioned in the judgment of the trial Court that the judgment and decree dated 02.03.1994 passed in the earlier suit was not binding on the rights of the plaintiff, who are defendants in the present case and the same cannot be considered to be valid when the same was cancelled and judgment and decree dated 03.03.1994, 08.11.1994 and 01.03.1995 cannot be declared to be illegal, null and void as it was passed in accordance with law and no evidence was produced by the plaintiff to prove as to how the said judgment and decrees were invalid. Even the mutation was sanctioned on the basis of these decrees. The plaintiff has failed to prove as to how he was owner in possession of the land, in dispute and that the judgments and decree in favour of the respondents were null and void.

On perusal of judgments of both the Courts below, it is apparent that the plaintiff-appellant has miserably failed to prove his case as neither he was able to prove the earlier judgment and decree passed in the year 1994 to be null and illegal nor he was in a position to prove as to how he claimed himself to be the owner in possession of land measuring 106 K 14 M by way of succession.

There are concurrent findings recorded by the Courts below and as such, there is no merit in the contentions raised by learned counsel for the appellant and the appeal, being devoid of any merit, is hereby dismissed.

**(DAYA CHAUDHARY)**  
**JUDGE**

08.02.2017

**gupreet**

Whether speaking/reasoned

Yes

Whether Reportable

Yes