

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 6138 of 2015 (O&M)

Date of decision : August 16, 2017

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Smt. Kaushalya Devi

.....Appellant

Versus

Sh. Har Chand and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. N.S Shekhawat, Advocate for the appellant.

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RITU BAHRI, J.

C.M No. 15349-C of 2015

Prayer made in the application is for condonation of delay of 71 days in filing the present appeal.

For the reasons stated in the application, delay of 71 days in filing the appeal is condoned. C.M is allowed.

RSA No. 6138 of 2015

Present appeal has been filed against the judgment dated 25.3.2011 passed by the Civil Judge (Junior Division), Rewari, whereby the suit filed by the appellant-plaintiff for declaration and permanent injunction has been dismissed and judgment dated 29.11.2014 passed by Additional District Judge, Rewari, whereby an appeal against the judgment of the trial

Court has been dismissed.

Briefly stated, the facts of the case are that the plaintiff-appellant (hereinafter referred to as 'the plaintiff') filed suit for declaration and permanent injunction with the averments that defendant no.4/respondent no.4, Ganga Ram (hereinafter referred to as 'the defendant no.4') is recorded owner of the land (detailed in para no.1 of the judgment of the trial Court) in the revenue estate of Village 3 Nangal Mundi, Tehsil & District Rewari vide jamabandi for the year 2001-02. It is averred that the plaintiff and proforma defendants have come to know on or about 26.5.2004 that defendant no.4 Ganga Ram has suffered a collusive decree dated 17.4.1999 and amended decree dated 29.7.2000 in civil suit No. 469/98 titled '**Vijay etc. versus Ganga Ram**' in which defendant no.1 to 3 have been given equal share i.e 3/4th share and 1/4th share in respect of the said land has been retained by defendant no.4. As per the averments, the said decree was simply a paper transaction and defendant no.4, Ganga Ram never gave the suit land to defendants no.1 to 3 in alleged family settlement and he never handed over the possession of the suit land to defendants no.1 to 3 and defendant no.4 is still in possession of the suit land. It was averred that the plaintiff and proforma defendants were the only first class legal heirs of defendant no.4 and they had a right of succession in the land in dispute.

On notice defendant no. 1 filed written statement and raised preliminary objections regarding maintainability of the suit. It was pleaded that the suit property was joint Hindu Coparcenary property and the same was acquired out of the income of ancestral property and joint funds of the family and since defendant no.4 was the eldest in the family, therefore, the

property in question was purchased in his name and defendants no. 1 to 3 were having pre-existing right and antecedent title in the said property when a family settlement took place between defendants no. 1 to 4 in the year 1995 and the same was very much legal and civil suit titled '**Vijay etc. vs. Ganga Ram**' was filed on the basis of the said family settlement. Defendant no.4 Ganga Ram came in the Court engaged a counsel got prepared his written statement and admitted the claim of the plaintiff in that suit and suit was decreed and judgment and decree dated 17.4.1999 and amended decree dated 29.7.2000 are very much legal and binding on the parties. Another civil suit filed by defendants no. 1 to 3 against defendant no.4 and the plaintiff is pending in the Court of ACJ (SD), Rewari and the said suit has been filed to get the wrong entries in the name of the plaintiff corrected as entry regarding some part of the said property in the name of the plaintiff as *gair marusi* are wrong and illegal. Separate written statements were filed by defendants no. 2 & 3 taking the plea that the suit had been filed at the instance of defendant no.4, who is the husband of the plaintiff and father of proforma defendants.

From the pleadings of the parties, following issues were framed by the trial Court:

- 1. Whether the plaintiff is entitled for declaration as prayed for? OPP.*
- 2. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 3. Whether the suit of the plaintiff is barred by limitation? OPD.*
- 4. Whether the plaintiff has no cause of action to*

file the present suit? OPD.

5. Whether the suit of the plaintiff is barred by principle of resjudicata? OPD

Both the Courts after going through the evidence led on record held that it was not in dispute that defendant no.4 was still alive. Defendants no. 1 to 3 proved by way of examining the relevant witnesses that defendant no.4 had engaged a counsel and had filed written statement and had appeared before the Court and had made a statement in the Court and on the basis of his written statement and statement made, the impugned judgment and decree dated 17.4.1999 and amended decree dated 29.7.2000 were passed. There were no allegations that the said judgment and decree was passed by way of fraud. Defendant no.4 is still alive but he has not challenged the judgment and decree dated 17.4.1999 and amended decree dated 29.7.2000. It was observed that in that case, he appeared in the Court through Shri. S.N Vashist, Advocate but when the case was fixed for filing written statement, none appeared on his behalf and he was proceeded against ex parte. Moreover defendants have proved by way of evidence in the shape of application dated 11.6.1999 for ration card Ex. DW1/1 and Ex. DW1/2 dated 18.11.2004 that defendant no.4 Ganga Ram is residing with the plaintiff. Both applications bear the signature of Ganga Ram. Thus, it stood established that the suit had been filed by plaintiff in collusion with defendant no.4 Ganga Ram. The revenue entry in the name of Kaushalya Devi was made by the revenue officials on the basis of some decree but no particulars of decree i.e name of the Court, suit, date of decree etc. is mentioned nor there is any reference of rapat roznamcha number. The

revenue entries in favour of Kaushlaya have been rightly ignored by both the Courts while dismissing the suit of the plaintiff as they are without any legal basis. The suit of the plaintiff has been rightly dismissed as her husband defendant no.4 was alive and was party to the proceedings when judgment and decree dated 17.4.1999 and amended decree dated 29.7.2000 were passed. Defendants no. 1 to 3 were brothers of defendant no.4 who were given $\frac{3}{4}$ th share and $\frac{1}{4}$ th share was retained by defendant no. 4 himself. Most of the property was equally divided and defendant no.4 had never challenged those decrees. The plaintiff being his wife could not challenge the above said decrees on the ground that it was self-acquired property of defendant no.4. The suit has been rightly dismissed as defendant no.4 never challenged the above said decree dated 17.4.1999 and amended decree dated 29.7.2000.

In view of all that has been discussed above, no substantial question of law arises for determination in the present regular second appeal. Interference of this Court is not warranted in the judgments passed by the Courts below. Hence, the present regular second appeal is dismissed.

August 16, 2017

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**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No