

RSA No. 3755 of 2014 (O&M)

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

**RSA No. 3755 of 2014 (O&M)
Date of Decision: 9.3.2017**

Bhagat Singh

.....Appellant

Vs.

Smt. Savitri and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Suryakant Gautam, Advocate
for the appellant.

Mr. D.S. Malik, Advocate
for the respondents.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful plaintiff is in regular second appeal against impugned judgment and decree dated 20.2.2014 passed by the learned first appellate court, whereby first appeal of the plaintiff was dismissed and the impugned judgment and decree dated 23.3.2010 of the learned trial court court, dismissing the suit for declaration, were upheld.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that plaintiff/appellant Bhagat Singh filed the suit seeking decree for declaration against Smt. Savitri etc. defendants/respondents with the averments that the agricultural land reassuming 224 kanals 17 marlas to the extent of 1/4th share corresponding to 81 kanals 4 marlas comprised in khewat no. 160 khata no. 244, situated in

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the revenue estate of village Kalwa, Tehsil Safidon is joint Hindu Hindu Family and coparcenary property of the plaintiff and his father Maha Singh and the sale deed no. 146 of 24.5.1988 allegedly registered with Sub Registrar, Pillu Khera regarding the land of rectangle No. 147 killa no. 14(8-0) which was part of the suit land, executed by Maha Singh in favour of defendants No. 2. Sale deed No. 250 dated 21.6.1988 was allegedly executed by defendant No. 3 in favour of defendant No. 1 regarding the suit land and further mutations No. 2200 and 2201 entered and sanctioned on the basis of above said sale deeds were null, void and not binding on the right of the plaintiff and for consequential relief of permanent injunction restraining the defendants from making any kind of interference into the peaceful possession of the plaintiff over the suit land forcibly and illegally with the help of their agents, servants and family members etc. and further restraining the defendants no. 1 and 2 from alienating and transferring the said land in favour of any body.

The case set up by the plaintiff was that Maha Singh, his father, had two wives namely Shanti from whom plaintiff was born and Savitri defendant no.1, from whom Kuldeep was born. Kuldeep brother of the plaintiff and son of defendant No. 1 died unmarried and issueless. Defendant No. 1 is step mother of the plaintiff. It was pleaded that the land in dispute was previously owned and possessed by Phoola son of Shib Lal and after that, it was inherited by Maha Singh and then by other heirs. Plaintiff and his father Maha Singh were governed by Hindu Law and plaintiff being son of Maha Singh and coparceners acquired right with the suit land since the time of his birth. After inheriting the property, the same was mutated in the name of plaintiff vide mutation No. 1817 sanctioned on 7.5.2008 and in this way,

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the suit land was ancestral and coparcenary property of the plaintiff and his father Maha Singh.

It was further pleaded that in order to show the property as self acquired property, defendants succeeded in transferring the land of rectangle No. 147 killa no. 14 measuring 8 kanals in favour of defendants No. 2 by playing fraud and misrepresentation upon the father of the plaintiff. Later on, defendant set No. 1 also succeeded in getting the suit land in her favour from defendants No. 2 vide sale deed No. 146 dated 24.5.1988 allegedly executed by defendants No. 2 in favour of defendant No. 1 and mutation no. 2200 and 2201, subsequent revenue record entries pertaining to the suit land were null, void and not binding on the rights of the plaintiff. Plaintiff further pleaded that defendant No. 1, in order to grab the HUF property, got transferred the same vide sale deed No. 146 dated 24.5.1988 allegedly executed by Maha Singh and then another sale deed No. 250 dted 21.6.1988 was executed in her favour by defendant No. 1, as property was never transferred to defendant No. 2 by said Maha Singh. Maha Singh (now deceased) father of the plaintiff was having no right to transfer and alienate the suit land vide sale deed no. 146 of 24.5.1988.

It was further pleaded that sale deed dated 24.5.1988 was without consideration and nothing was paid by defendant No. 2 to Maha Singh. Plaintiff being coparcener had right, title and interest in the suit land. All the mutations already sanctioned were wrong, illegal, null, void and not binding on the rights of plaintiff on the ground that after death of first wife Smt. Shanti, mother of plaintiff, deceased Maha Singh was under the influence of defendant No. 1 and his son Kuldeep. Otherwise also, Maha Singh was having no right to transfer and alienate the suit land vide sale

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deed No. 146 dated 24.5.1998 and the impugned sale deed was without consideration. It was also pleaded that deceased Maha Singh had no legal necessity. Now the defendants on the basis of the impugned sale deeds and mutations and other revenue entries were threatening to disturb peaceful possession of the plaintiff over the suit land. The plaintiff requested the defendants several times to desist from their illegal design but to no avail, which necessitated the plaintiff to file the suit.

Having been served in the suit, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. No replication was filed. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to the declaration and injunction as prayed for?OPP
2. Whether the suit is not maintainable in the present form?OPD.
3. Whether the plaintiff has got no cause of action and locus standi to file the present suit? OPD
4. Whether the suit is bad for mis joinder and non joinder of necessary parties?OPD
5. Whether the plaintiff has not come to the court with clean hands? OPD
6. Whether the suit is hopelessly time barred?OPD.
7. Whether no proper court fee has been affixed by the plaintiff?OPD.
8. Relief.

With a view to prove their respective pleaded cases, 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 plaintiff

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has miserably failed to prove his case. Accordingly, suit for declaration filed by the plaintiff-appellant, claiming the suit property as ancestral property in the hands of his father-Maha Singh, was dismissed vide impugned judgment and decree dated 23.2.2010. Feeling aggrieved, plaintiff filed his first appeal which was also dismissed by the learned first appellate court vide impugned judgment and decree dated 20.2.2014. Hence this regular second appeal at the hands of the plaintiff.

Before issuing notice of motion and on the request made by the learned counsel for the appellant, matter was referred to the Mediation and Conciliation Centre of this Court, enabling the parties to arrive at an amicable settlement, vide order dated 21.1.2015. However, proceedings dated 9.4.2015 and 28.4.2015 before the Mediation Centre of this Court would show that mediation could not be carried out due to absence of both the parties. Accordingly, the Director, Mediation and Conciliation Centre, vide order dated 2.5.2015, sent this case to the Court for its decision on merits.

Heard learned counsel for the parties.

The entire case of the plaintiff-appellant revolves around one basic fact, as claimed by him, that the suit property was ancestral in the hands of Maha Singh-predecessor-in-interest of the parties to this litigation.

When specifically and repeatedly asked to refer to any relevant evidence or material in support of his contention that the suit property was ancestral in the hands of Maha Singh, learned counsel for the appellant had no answer and rightly so, it being a matter of record. In this regard, learned counsel for the appellant was rightly feeling handicapped in the absence of any relevant evidence available on record.

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It is the settled proposition of law that property would be treated as non ancestral until and unless it is proved to be ancestral, by leading cogent and convincing evidence. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees, holding that suit property could not be proved as ancestral in the hands of Maha Singh, because of which the impugned judgments and decrees deserve to be upheld.

Learned counsel for the appellant, while referring to the observations made by the learned first appellate court in para 12 of its impugned judgment, submits that application of the plaintiff-appellant moved under Order 41 Rule 27 of the Code of Civil Procedure ('CPC' for short) for leading additional evidence, during the pendency of his first appeal, was illegally declined. However, when asked that if it was so, why the appellant did not move such an application along with the present appeal, learned counsel for the appellant had again no answer.

However, observations made by the learned first appellate court in para 12 of its impugned judgment, declining the application of the appellant for permission to lead additional evidence, have also not been found suffering from any patent illegality. It is so said, because the plaintiff-appellant could not furnish any reasonable explanation as to why he could not produce the said evidence before the learned trial court, despite exercising due diligence. It goes without saying that appellant being the plaintiff, onus was on him to prove his case, by leading cogent evidence, however, he failed to do so.

It is also pertinent to note here that since the plaintiff

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challenged the sale deeds after a long and unexplained delay of 16 years, his suit was rightly held to be time barred by the learned first appellate court and said findings, recorded by the learned Additional District Judge in para 17 of its impugned judgment, have not even been challenged by the learned counsel for the appellant, during the course of hearing of the present appeal. In this view of the matter, it can 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.

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

1. Commissioner of Wealth tax, Kanpur etc. Vs. Chander Sen etc, 1986 AIR (SC) 1753
2. State of Tripura and others Vs Arbinda Chakraborty and others, 2014 AIR (SC) 3570
3. Uttam Vs. Saubhag Singh and others, 2016 (4) SCC 68
4. Dayanand and others Vs. Dharam Pal, 2010 (65) RCR (civil) 326 (P&H)
5. Rajinder Singh Vs. Dial Singh (since deceased) thr. LRs and others, 2016 (3) LAR 268
6. Musini Leela Prasad Vs. Musini Bhavani and others, 1995 (3) RRR 374

Before arriving at a judicious conclusion, learned first appellate court re-examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Cogent findings

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recorded by the learned first appellate court in para 17 of its impugned judgment, which deserve to be noticed here, read as under:-

“The plaintiff has filed this suit in December, 2004 whereas impugned sale deeds were executed in the year 1988. The suit was filed after long gap of 16 years. The suit has been filed after the death of Maha Singh who statedly died in the year 1997. The registration of sale deed is notice to each and everyone and to general public. The sale deeds were to be challenged within 3 years of its execution. The argument that plaintiff is in possession of the suit land and remained in possession and now the defendants were threatening to disturb his possession would be untenable as the plaintiff has failed to prove his possession over the suit since from time of execution of sale deeds till date. The suit of the plaintiff being hopelessly time barred is not maintainable. If for the sake of argument, the suit land is considered to be ancestral in the hands of Maha Singh, it was required for the plaintiff Bhagat Singh who was not minor at that time in the year 1988 to have challenged the sale deed within three years. As already observed, the question that sale deed was executed without legal necessity or not, could not be agitated by plaintiff after lapse of 16 years. Moreover, the defendants have pleaded that the amount was spent for discharging the loan taken for marriage of plaintiff and the evidence in that regard goes un rebutted. The argument of learned counsel for the plaintiff that defendants set no. 2 did not appear to substantiate that they made bonafide enquiry regarding legal necessity, hence there was no legal necessity, would also be untenable as plaintiff himself is guilty of challenging the sale deeds after lapse of 16 years. In this view of the matter, it is observed that suit of the plaintiff is time barred. Learned court below has dealt with the matter in

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right perspective and has rightly returned the findings on issues no.1 and 2. issue no.6 is also decided in favour of defendant. No interference of this court is required in well reasoned judgment of ld. court below. So, findings of learned court below are hereby affirmed. .”

Learned counsel for the appellant failed to point out any patent illegality or perversity in the abovesaid findings recorded by the learned first appellate court. 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 judgments of 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.

9.3.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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