

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

RSA 1341/2017

Date of decision:23.10.2017

Karan Singh

.....Appellant

v.

Hawa Singh and another

.....Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.Akshay Kumar Goel,Advocate for the appellant.

Jaswant Singh,J,(Oral).

Defendant no.1/appellant is in appeal directed against the concurrent findings recorded by both the Courts below whereby suit of the respondent no.1-plaintiff (Hawa Singh) for declaration to the effect that in addition to the land already recorded in his name he was also owner in possession of 175/2592 share and that judgment and decree dated 5.1.1994 suffered by defendant no.2-Smt.Panna,aunty (*Chachi*) of plaintiff in favour of her son-defendant no.1 (cousin of plaintiff) was illegal,null and void upto the share of the plaintiff which he received from defendant no.2 vide judgment and decree dated 3.9.1990 passed in Civil Suit No.594/1990 and as such subsequent revenue entries were liable to be modified accordingly, was decreed by learned Additional Civil Judge,(Sr.Div.)Loharu vide judgment and decree dated 26.2.2014 and the appeal filed by defendants was dismissed by learned Additional District Judge,Bhiwani vide judgment and decree dated 28.10.2016.

Briefly noticed the facts of the instant appeal are that plaintiff-

Hawa Singh filed the said suit with the averments that he was already recorded as owner in joint possession of 37/1080 share of the land measuring 1095 kanals 07 marls, as detailed in the head note of the plaint. The same was ancestral and coparcenary property of the parties, who are related to each other, and defendant no.2 was recorded as owner in possession of 35/216 share of the land measuring 429 bighas 15 biswas. A family settlement was arrived at between plaintiff and defendant no.2 by virtue of which plaintiff became owner in possession of 175/2592 share in the land measuring 429 bighas 15 biswas. Defendant no.2 suffered a decree dated 3.9.1990 in Civil Suit No.594/1990 in favour of plaintiff-Hawa Singh. Certified copy of said judgment was given to Patwari for incorporation of mutation but he did not do so. It was further averred that since 3.9.1990 plaintiff was owner in joint possession of 175/2592 share in the land mentioned in the head note of the plaint and that in the last week of July 2010, defendant no.1 i.e. son of defendant no.2 started claiming himself as absolute owner of 35/216 share of the land measuring 1095 kanals 07 marlas on the basis of revenue entries and started causing interference in the cultivation of plaintiff to the extent of 175/2592 share which was transferred by defendant no.2 by suffering a decree dated 3.9.1990. It was further alleged that defendant no.2 suffered a decree dated 5.1.1994 passed in Civil Suit No.530/1993 in respect of 175/1080 share and mutation no.676 was sanctioned on 31.1.1994 on the basis of said decree dated 5.1.1994. It was averred that defendant no.1 was only owner in joint possession to the extent of 245/2592 share of land measuring 1095 kanals 07 marlas and plaintiff in addition to his share was also owner in joint possession of 175/2592 share and thus revenue entries in the name of defendants were liable to be

corrected accordingly as defendant no.2 was not competent to suffer decree to the extent of 35/216 share in favour of her son-defendant no.1 as at that time she was only owner to the extent of 245/2592 share. It was claimed that thus judgment and decree dated 5.1.1994 suffered by defendant no.2 was not binding on the plaintiff.

Upon notice, defendants filed joint written statement. The decree dated 3.9.1990 on the basis of which plaintiff was asserting his claim was dubbed as a result of fraud and misrepresentation. Further alleged family settlement or delivery of possession of suit land by defendant no.2 to plaintiff was also denied.

Heard learned counsel for the appellant and perused the impugned judgments and decrees. Besides that at the time of arguments, learned counsel for the appellant has, on the asking of the Court, produced copy of the judgment dated 3.9.1990 passed by Sub Judge III Class Bhiwani in Civil Suit NO.594/1990 titled Hawa Singh v Smt.Panna. A perusal of the same reveals that on 3.9.1990 plaintiff/respondent-Hawa Singh and defendant no.2-Smt.Panna both were represented by their respective counsel and Smt.Panna had filed admission written statement admitting the claim of the plaintiff in toto. Her statement was recorded separately in Court. Accordingly the suit of the plaintiff-Hawa Singh was decreed. The order dated 3.9.1990 passed in Civil Suit NO.594/1990 is reproduced as under:-

*Present:- Sh.HP Sharma, Advocate for plaintiff
Sh.RC Gaur, Advocate for defendant.*

Judgment:

The plaintiff has filed the present suit for declaration that he is owner in possession of the suit land as detailed in the head note of the plaint by way of family settlement. The defendant has filed admission written statement admitting the claim of the plaintiff in toto. Her statement recorded separately. Hence the parties are not at issue. Consequently, suit of the plaintiff for declaration that he is owner in possession of the suit land as detailed in the head note of the plaint is hereby decreed as prayed for with no order as to costs. Decree sheet be prepared accordingly. File be consigned to record room."

In the present *lis*, both the Courts below on the basis of evidence available on record have found that defendants and plaintiff alongwith other family members visited the Court of Sub Judge III Class,Bhiwani on 3.9.1990 and on the basis of family settlement four consent decrees came into existence. Hawa Singh-plaintiff herein suffered one consent decree of his land in favour of his sons by virtue of judgment and decree dated 3.9.1990 Ex.D3/A and Ex.D3 in Civil Suit No.585/1990 titled as Naresh Kumar and others v Hawa Singh. On the same day his brother Birkha Ram also suffered one decree Ex.D8 in favour of his sons Mange Ram and another in Civil Suit NO.592 titled as Mange Ram and another v Birkha Ram. Further, another judgment and decree Ex.D13 in Civil Suit No.594/1990, which is alleged by appellants herein to be a result of fraud and misrepresentation by plaintiff-Hawa Singh, was suffered by Smt.Panna-defendant no.2 in favour of plaintiff herein, as reproduced above. Fateh Singh,father of present appellant-Karan Singh also on the same day suffered a decree in favour of his son Karan Singh in respect of his land. The Courts below have noticed that in the present *lis* defendant no.2-Smt.Panna has admitted that about 23 years ago she had visited the Court for suffering a decree which admission confirmed that she had visited on 3.9.1990 for executing the decree in favour of present plaintiff-Hawa Singh. Since Smt.Panna was accompanied by her husband Fateh Singh and son Karan Singh,defendant/appellant herein, the courts below have refused to accept the plea now sought to set up by appellants herein that present plaintiff taking benefit of his Lamberdari status prevailed over Smt.Panna in order to get the decree executed in his favour.

In view of the above, in my opinion, no question of law much

less substantial question of law arises for consideration in the present appeal.

Dismissed.

23.10.2017
joshi

(Jaswant Singh)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No