

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

**RSA No.984 of 1990 (O&M)
Date of decision:12.10.2018**

Chanan Ram and others ... Appellants

Vs.

Gajjan Singh (deceased) through LRs ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. P.K.Ganga, Advocate, for the appellants.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Parunjeet Singh, Advocate
for the respondent.

AMIT RAWAL J.

The appellant-plaintiffs are in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit claiming declaration as owners in possession in equal shares of ½ share in land measuring 505 kanals, detailed given in the suit (hereinafter called as “suit property”) situated in village Alika, Tehsil and District Sirsa by challenging the judgment and decree dated 11.01.1968 passed in civil suit no.32 of 1968 titled as “Kartar Singh vs. Gajjan Singh” to be illegal, null and void, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

The appellant-plaintiffs instituted the suit on the premise that Kartar Singh and Gajjan Singh were the tenants over the piece of land measuring 97 bighas 15 biswas owned by one Som Parkash. An application

under Section 18 of the Punjab Security of Land Tenures Act for the purchase of aforementioned land was filed and the same, vide order dated 23.05.1963 was allowed. A land comprising of khasra nos.791(7-3), 792(7-9), 793 (1-15), 794(4-19), 795(7-2), 796(4-13), 797(7-7), 798 (4-14), 799A1-if(8-10), 799 B(1-9), 799 Jaam(5-10), 800 (3-12), 801(6-5), 802(2-17), 803(24-2) was allotted for a sum of ₹40,805.72 paise. After consolidation, the land measuring 505 kanals was allotted in lieu of land measuring 97 bighas 15 biswas.

Kartar Singh and Gajjan Singh were the real brothers and children of Roor Singh. Kartar Singh, was a man of feeble mind, whereas, Gajjan Singh being clever person played a fraud upon Kartar Singh by obtaining the judgment and decree aforementioned. Gajjan Singh instituted a civil suit bearing No.423 of 1966 against Kartar Singh claiming himself to be the exclusive owner of the entire land measuring 485 kanals 11 marlas but the aforementioned suit was dismissed on 22.08.1966. However, in appeal, the matter was remitted and the trial Court, vide order dated 08.01.1968, appointed one referee but on 09.01.1968, Gajjan Singh got the thumb-impressions of Kartar Singh on some blank papers required for the purpose of withdrawing the suit but the said blank papers were used for scribing the plaint and filed another suit bearing No.32 of 1968 titled as “Kartar Singh Vs. Gajjan Singh” wherein Gajjan Singh admitted the claim of Kartar Singh and obtained the impugned decree in his favour. Resultantly, *rapat roznamcha* report dated 17.01.1970 had no binding

effect. Plaintiff no.1 was the wife of Kartar Singh, whereas, the remaining plaintiffs were the sons and daughters.

Defendant admitted the land measuring 97 bighas 15 biswas purchased by Gajjan Singh along with Kartar Singh. It was stated that Kartar Singh being a poor person was not in a position to pay his share, whereas, Gajjan Singh paid the entire sale consideration. As a result thereof, family settlement was arrived at on 09.01.1968, wherein Kartar Singh was held to be owner of the land measuring 96 kanals 3 marlas and the possession was also handed over. The remaining land fell into the share of defendant, who was owner and in exclusive possession thereof. Girdawari entries reflected the possession of Kartar Singh in respect of land given to him. The factum of Kartar Singh being weak minded person was emphatically denied. Kartar Singh engaged the counsel himself and filed a suit against the present defendant which was decreed, therefore, there was no element of fraud. The mutation was effected on the basis of the order of the Assistant Collector Grade I, dated 21.05.1983, Ex.P9 and the rights of the parties were determined. It was also alleged that suit was time barred and Kartar Singh during his life time did not assail the aforementioned judgment and decree till the date of his death in the year 1981-82. Filing of suit was nothing but an act of greed.

Since the parties were at variance, the trial Court framed the following issues:-

“1. Whether the plaintiffs are owners in possession being successor of Kartar Singh deceased on the grounds mentioned

in the plaint?OPP

1-A Whether the decree and and judgment dated 11.01.1968 in civil suit no.32-C is liable to be set aside as alleged?OPP

2. Whether the mutation no.2136 was sanctioned before passing the decree in suit “Kartar Singh vs. Gajjan Singh”, dated 11.01.1968 as alleged (objected to). OPP

3. Whether the suit is not maintainable in the present form? OPD

4. Whether the suit is not within limitation? OPD

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

6. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit?OPD

7. Whether the plaintiffs have no locus-standi to file the present suit?OPD

8. Whether the plaintiffs have not paid the proper court fee?OPD

8-A Whether the decree dated 11.1.1968 passed in civil suit no.32 of 1968 titled as Kartar Singh vs. Gajjan Singh is the result of fraud and misrepresentation as alleged in para no.4-A of the plaint?OPP

8-B Whether the plaintiffs are entitled to the possession of the suit land as alleged?OPP

8-C Whether Kartar Singh predecessor in interest of the

plaintiffs had waived his right to the suit land except 96 kanals 3 marlas of the land as alleged in the additional objection no.3 of the written statement?If so, its effect?OPD

8-D Whether Kartar Singh had acquiesced in admitting the defendant to be owner of the suit land except 96 kanals 3 marlas as alleged in additional objection no.3, of the written statement as alleged?OPD

8-E Whether plaint does not disclose the particulars of fraud, coercion and undue influence, if so, its effect?OPD

8-F Whether the defendant had become the owner of the suit land by way of adverse possession, as alleged?OPD

8-G Whether the suit is bad for non-joinder of necessary parties?OPD

9. Relief.”

The plaintiffs placed on record the following documents:-

1. Ex.P1
and
Ex.P2 jamabandis for the year 1966-67
2. Ex.P3 certified copy of decree dated 11.01.1968
3. Ex.P4 copy of order dated 11.01.1968
4. Ex.P5 copy of order dated 20.08.1962 of the Assistant Collector
5. Ex.P6 rapat roznamcha dated 34 dated 17.6.1970
6. Ex.P7 order dated 23.05.1963 of the Collector under the Punjab Security of Land Tenures Act

7. Ex.P8 mutation bearing No.173 dated 25.11.1981
8. Ex.P9 order dated 13.10.1982 whereby the mutation was disputed.
9. Ex.P10 Order dated 21.05.1983 passed in civil suit no.680-C of 1982 titled as Gajjan Singh Vs. Ram Lal etc.
10. Ex.P11 mutation bearing No.2173 dated 25.12.1980
11. Ex.P12 order dated 04.01.1982 of the Collector
12. Ex.P13 agreement dated 08.01.1968 in civil suit no.423 of 1966
13. Ex.P14 order dated 08.01.1968
14. Ex.P15 application dated 10.01.1968
15. Ex.P16 another application dated 10.01.1968
16. Ex.P17 statement of advocate
17. Ex.P18 order dated 11.1.1968

and examined PW1-Chanan Ram, PW2-Ajmer Singh, PW3-Charan Das, Shayam Lal as PW4 and Natha Singh as PW5. On the other hand, defendant brought on record Ex.D1 to Ex.D10 and examined eight witnesses.

On the basis of the evidence brought on record as noticed above, the trial Court dismissed the suit and the appeal laid before the Lower Appellate Court was also dismissed.

Mr. P.K.Ganga, learned counsel appearing on behalf of the appellant-plaintiffs submitted that the Courts below erroneously dismissed the suit as there was no occasion for Kartar Singh to file a civil suit for declaration. The alleged suit was filed by Sh.Gurmit Singh, Advocate on behalf of Kartar Singh, though he had been a counsel for Gajjan Singh in a

civil suit filed by him. Had there been an actual compromise, the same could have been placed on record in a civil suit filed by Gajjan Singh, which was already pending. There was no occasion for Gajjan Singh to withdraw the suit. The defendant failed to place on record any record of alleged settlement. The land 97 odd bighas which prior to the consolidation was jointly allotted to Kartar Singh and Gajjan Singh. The mutation was sanctioned in the year 1982, in essence, the decree remained concealed from the knowledge of Kartar Singh and it was for that reason, he could not challenge the same during his life time, thus, fraud and misrepresentation have evidently been proved. The factum of decree came to the knowledge of plaintiffs only after the demise of Kartar Singh, therefore, the suit filed in the year 1981 was within limitation as per the provisions of Article 59 of the Limitation Act.

Mr. Ashish Aggarwal, learned Senior counsel assisted by Mr. Parunjeet Singh, Advocate appearing on behalf of the respondent-defendant submitted that suit land was 97 bighas 15 biswas which came to 485 kanals 11 marlas. As per the order dated 20.08.1962, the Assistant Collector accepted the application for purchase of aforementioned land in favour of Gajjan Singh and Kartar Singh. A sum of ₹40,805.72 was paid by Gajjan Singh. Vide compromise dated 10.10.1964, DW6/1, a compromise outside the Court between Kartar Singh and Gajjan Singh was arrived at wherein Kartar Singh had agreed to get 5 ½ acres (44 kanals). It was also stated that the entire amount qua allotment was paid by Gajjan Singh. A

civil suit bearing No.423 dated 28.06.1966 was filed by Gajjan Singh claiming the entire land. On 11.08.1966 , Ex.DW2/1, a compromise was arrived at wherein Kartar Singh was given the land measuring 68 kanals, i.e. 8.5 acres in toto and in this regard, statement of both Kartar Singh and Gajjan Singh, as DW2/1, was recorded. It is in these circumstances, vide judgment dated 22.08.1966 (Ex.D11), the suit was dismissed on the premise that compromise amounted to sale and gift, therefore, it required the registration. The matter went in appeal but was remanded and the Sub-Judge referred the matter to referee. However, in the meantime, Kartar Singh filed a civil suit against Gajjan Singh bearing No.32 of 1968, wherein, he agreed to take 96 kanals on the basis of family settlement.

The aforementioned suit was decreed by the trial Court, vide judgment and decree dated 11.01.1968 and on the same date, suit filed by Gajjan Singh was withdrawn. The present suit had been filed on 10.09.1981 after a period of 13 years by propounding a theory that signatures of Kartar Singh had been obtained on the blank papers for claiming the possession. Both the Courts below examined the entire documentary evidence threadbare and found that it was a mischievous act on the part of the legal representatives of Kartar Singh to claim more land despite the fact that they had been in possession of 96 kanals of land. No explanation has come forth as to how and under what circumstances, they acquired the knowledge of the decree just few days prior to filing of the suit to bring the suit within a period of limitation. The pleadings have to be specific. In fact, provisions of Article 58 of the Limitation Act would apply and urged this Court for

dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Ganga. The reason is not only one but many:-

Rapat roznamcha bearing No.34 dated 17.06.1970 (Ex.P6) reflected the factum of decree. It was not the case of the plaintiffs that Kartar Singh or his successors-in-interest were not in the knowledge of *rapat roznamcha*. There would have been some force, had the aforementioned decree not seen the light of day till the mutation in the year 1980 was sanctioned. Rapat roznamcha is a public document and therefore, it does not lie in the mouth of the plaintiffs to claim its ignorance. During all this period (i.e.13 years), Kartar Singh remained alive and did not challenge the decree. No explanation has come forth as to how, fraud and misrepresentation had been played upon Kartar Singh, in other words, ingredients of Order 6 Rule 4 of Code of Civil Procedure have not been proved to the hilt.

Narain Dass appeared as DW3 and stated that on 11.08.1965, Munshi Singh petition writer had scribed the compromise deed dated 11.08.1966 (Ex.DW2/A). DW6-Bihari Lal, another attesting witness of the agreement had also been examined. DW6/1 another agreement 10.10.1964 executed by Kartar Singh, wherein, he agreed to get only 5 ½ acres of land out of the total land purchased by Kartar Singh and Gajjan Singh proved that he had no means to pay the entire sale consideration of remaining land

of his share. The aforementioned document had been proved through the testimony of DW6-Bihari Lal. Despite extensive cross-examination, the plaintiffs had not been able to belie their statements. Both the witnesses Gajjan Singh, DW1 and Ram Parkash, Advocate, DW5 stated that even Kartar Singh, who engaged them after hearing the contents thereof appended his signatures. The mutation bearing No.2136 was passed on the basis of the order dated 23.05.1963 of the Collector and not on the basis of decree dated 09.01.1968 as the dispute regarding the mutation was decided by the collector on 04.01.1982 (Ex.P12), thus, it did not create any doubt with regard to genuineness of the decree of 1968. If at all, some fraud had been played upon Kartar Singh, some steps could have been taken in lodging appropriate proceedings.

DW6-Bihari Lal also stated that Kartar Singh had suffered a statement dated 11.08.1966 in a civil suit No.423 of 1966 which was duly signed wherein he admitted that entire price of the land was to be paid by Gajjan Singh as he was in possession of 5 ½ acres of land. All these factors leave to irresistible conclusion that suit was filed out of greed and nothing else.

In my view, the suit could not have been brought under the purview of Article 59 of the Limitation Act for eradicating the rigours of limitation but would be hit by law of limitation as it was not filed within a period of limitation. For the sake of brevity, Articles 58 and 59 of the Limitation Act, read as under:-

58	To obtain any other declaration	Three years.	When the right to sue first accrues.
59	To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years.	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him

From the cumulative reading of the aforementioned reasoning, it has not been proved on record that plaintiffs were totally oblivious of the order of the Collector and the mutation no.2136, much less, rapat roznamcha and despite that did not avail the legal remedy, thus, arguments of Mr. Ganga, have not been able to bring the case within the realm of perversity to form a different opinion than the one arrived at by the Courts below.

No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 12, 2018
savita
Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No