

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.2360 of 1993
Date of decision:20.02.2018

Sita Ram and another

... Appellants

Vs.

Mange Ram (deceased) through LRs and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kulvir Narwal, Advocate
for the appellants.

Ms. Sharmila Sharma, Advocate
for the respondents.

AMIT RAWAL J.

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, claim for declaration by challenging the judgment and decree dated 08.05.1972 passed in a suit no.624 of 1972 titled as Mange Ram etc. vs. Mangat, had been dismissed.

Before adverting to the contentions of learned counsel for the parties, it would be apt to give preface of the matter.

Plaintiff – Mangat instituted a suit aforementioned challenging the judgment and decree dated 8.5.1972, *ibid*, on the ground that the same was obtained by playing fraud upon him by the defendants; with a consequential relief of possession of agricultural land measuring 150 kanals 18 marlas situated in the revenue estate of village Naraina, Tehsil Panipat. It was alleged in the plaint that in the year 1972, defendants proposed to the

plaintiff to execute a Will in respect of the property so that married daughter of the plaintiff would not be able to lay claim or right in the property. The plaintiff agreed to the aforementioned request. On 8.5.1972, defendant no.1 brought the plaintiff to Panipat in the Court but instead of getting the Will executed, got fraudulently decree aforementioned, executed on which, thumb impressions of the plaintiff was obtained on one or two places. There was no family arrangement between plaintiff and defendants nor the plaintiff admitted their claim in the earlier suit. Even summons were not issued in the earlier suit. The mutation was sanctioned on 12.05.1975 in favour of the defendants. On the basis of the said decree, the defendants dispossessed the plaintiff from the suit land. When plaintiff approached the Patwari, came to know about the aforesaid decree, compelled to institute the suit on 05.03.1976.

Only defendant no.1 contested the suit and remaining defendants admitted the claim of the plaintiff. It was pleaded that there was no proposal for execution of the Will as per the pleadings in the plaint. In fact, defendants filed a suit for declaration that they were owners in possession of the suit land owing to the family arrangement and the plaintiff through counsel appeared in the suit and suffered a statement, thus, there was no question for playing fraud upon the plaintiff.

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

“1. Whether the decree dated 8.5.72 was obtained by the defendant by fraud and mis-representation as alleged and if so

to what effect? OPP

2. *Whether the plaintiff is entitled to the relief claimed?*

OPP

3. *Whether the suit is within time? OPP*

4. *Whether the suit as framed does not lie? OPD*

5. *Whether the suit has been properly valued for purpose of court fee and jurisdiction? OPP*

6. *Whether the plaintiff is estopped from filing the present suit? OPD*

7. *Relief.”*

The appellant-plaintiff produced Mai Ram-PW1, Khilla Ram-PW2, Rup Chand-PW3, Kalia-PW5 and PW4 himself, whereas, the defendants produced Manohar Lal as DW1 and DW2 - Jaswant Singh, Reader of the Court.

The trial Court on the basis of preponderance of evidence, dismissed the suit on merits as well as on limitation and the appeal laid before the Lower Appellate Court also met with the same fate.

Mr. Kulvir Narwal, learned counsel for the appellants submitted that both the Courts below have miserably erred in not taking note of the fact that plaintiff when appeared as PW4 specifically denied in his examination-in-chief that he did not make any statement in the Court in suit no.624 of 1972, whereas, defendants No.2 and 3 also admitted to the same fact. The decree should have been set aside on this ground only.

DW1-Manohar Lal, document writer, who allegedly wrote the written statement on behalf of Mangat Ram also stated in cross-examination that he was not known to him personally, thus, Mangat Ram remained unidentified and on this ground, the Court below ought to have rendered a finding that identity and presence of Mangat Ram was not conclusively proved. The statement of Jaswant Singh, Reader, DW2 could not have been looked into as it was not possible for the Govt. official to remember of having recorded a statement of Mangat Ram. All these factors were not looked into. In fact, the appellant wanted to execute a Will in favour of his son but not a decree and thus, urged this Court for setting aside the findings under challenge.

Ms. Sharmila Sharma, learned counsel for the respondents submitted that the concurrent findings of facts and law cannot be interfered with until and unless, there is gross illegality and perversity. Once the plaintiff admitted that he wanted to bequeath the property in favour of his son by way of Will, the decree under challenge was also to that fact, so no harm and prejudice was caused to the plaintiff. The plaintiff miserably failed to prove the ingredients of fraud.

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. Narwal.

The ingredients of Order 6 Rule 4 CPC do not envisage only the pleadings with regard to fraud and mis-representation but evidence as well. No conclusive evidence has been placed on record to show that

Mangat Ram did not appear before the trial Court. He has not been able to disprove the signatures on the written statement and power of attorney. Even otherwise, pith and substance of the suit was that he wanted to execute a Will in favour of his son so that married daughter did not lay any claim in the property. The reader of the Court had also proved the fact that it was Mangat Ram, who had appeared in the witness box. Despite cross-examination, the plaintiff could not cause any dent *vis-a-vis* identity of the person who stated to have impersonated as Mangat. If at all, there had been truth in the aforementioned commission of fraud, nothing prevented the plaintiff to initiate the criminal proceedings against the defendants. The occurrence of cause of action in the year 1976 to challenge the decree is just a ploy to bring the suit within a period of limitation, for, though the decree was passed in the year 1972, whereas, the suit was filed in the year 1976. Article 59 of the Limitation Act, provides a period of three years enabling the person to seek cancellation of a decree or rescission of contract. It cannot be believed that the plaintiff did not have knowledge of the decree. No evidence of dispossession from the house had been brought on record, thus, the plaintiff had not been truthful in approaching the Court in the year 1976.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees of the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

February 20, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No