

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

**RSA No. 4050 of 2007 (O & M)
Date of Decision:-25.1.2018**

State of Haryana

...Appellant

Versus

Ram Kumar (deceased) through LRs and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashok Singla, Additional A.G., Haryana
for the appellant.

Mr. Vinod S. Bhardwaj, Advocate
for respondents No.3 to 5, 7 to 9, 15, 16, 18, 20, 21, 23, 24, 28,
29, 30, 35 to 37, 39 to 42 and 45.

AMIT RAWAL J.(Oral)

CM No.14434-C of 2012

For the reasons mentioned in the application supported by an affidavit, the same is allowed and the delay of 59 days in filing the application i.e. C.M. No.14435-C of 2012 in C.M. No.2671-C of 2012 is condoned.

C.M. No.14435-C of 2012

Prayer in this application is for restoration of the C.M. No.2671-C of 2012 in main appeal which was dismissed in default on the ground that the counsel did not note the correct date.

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed and the C.M. No.2671-

C of 2012 in main appeal is restored to its original numbers.

C.M. No.2671-C of 2012

Prayer in this application is for restoration of the appeal which was dismissed in default vide order dated 3.3.2010.

After the decision vide order dated 3.3.2010, the applicant approached the Supreme Court aggrieved by the dismissal of its RSA by this Court on the ground of delay of 134 days in filing the appeal. The Supreme Court vide order dated 13.7.2009 set aside the order of this Court and remanded the appeal to this Court for consideration, in accordance with law. But this order was not notified to the Court resulting into dismissal in default. Mr. Vinod S. Bhardwaj, Advocate learned counsel for the aforesaid respondents has no objection if the application is allowed and the appeal is restored to its original number.

Accordingly, the application is allowed and the appeal is restored to its original number.

RSA No.4050 of 2007

The plaintiff-appellant is in appeal against the concurrent finding of fact whereby the suit filed by the plaintiff seeking declaration to the effect that they are owner in possession of the land comprising 99 Kanals 11 Marlas situated in the revenue estate of Village Dohka Mauji, Tehsil Charkhi Dadri, District Bhiwani as detailed and described in the head note of the plaint and mutation No.127 dated 31.3.1967 sanction owing to decision rendered in Civil Suit No.278 dated 1.2.1967 mutation No.170 dated 24.4.1975 owing to civil suit No.13 decided on 28.5.1974 and

mutation No.178 dated 1.4.1980 as per sale deed No.308 dated 16.6.1975 and sale deed bearing No.1606 dated 26.11.1991 to be null and void, has been decreed.

Mr. Ashok Singla, learned Additional A.G., Haryana, in support of its contentions submitted that the suit aforementioned was instituted on the premise that one Maman who was owner of the land had died issueless. The property was leased out to Bharat Singh and he moved an application for cancellation the mutation and sanctioning of the same in his favour but the said application was dismissed by the Commissioner, Patiala Division in the year 1959. Again an similar application was moved somewhere in the year 1969 but the same was also dismissed. Bharat Singh instituted a civil suit No.278 of 1967 against Maman claiming the ownership of the property by challenging the mutation. The aforementioned suit was decreed ex-parte vide judgment and decree dated 31.3.1967. The mutation (Ex.P16) on the same date was sanctioned in favour of Bharat Singh. The aforementioned decree and mutation was challenged by Vijay Singh and Hoshier Singh claiming themselves to be the Class-II heirs of Maman Singh being son of Patori, sister of Maman Singh against Bharat Singh. The aforementioned suit was decreed vide judgment dated 28.5.1974 which was upheld by this Court. However, on the basis of the aforementioned decree two sale deeds of 16.6.1975 in respect of his share was executed by Vijay Singh in favour of Chhatar Singh and 9 Kanal 19 Marlas and sale deed dated 26.11.1999 in respect of defendant-respondent No.45. It was averred in the plaint that in all the proceedings

the State was kept out of picture as matter of fact that the land on account of non-availability of its original owner class II class III heirs the property escheated in favour of Government.

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

- “1. Whether Maman died without leaving any legal heir ?OPP
2. Whether the Mutation No.127 dated 31.3.1967 is illegal, null and void, based on fraud and not binding on the rights of the plaintiff ? OPP
3. If issue No.2 proved, whether Mutation No.170 dated 24.4.1975 is also illegal, null and void, based on fraud and not binding on the rights of the plaintiff ? OPP
4. If issue No.2 and 3 proved, whether the sale deed No.308 dated 16.6.1975 is also illegal, null and void and not binding on the rights of the plaintiff ? OPP
5. If issue No.2 to 4 are proved, whether the land had already vested in the State of Haryana on 30.9.1959 and State of Haryana is owner in possession of the suit land as alleged ? OPP
6. Whether the suit is against dead person, if so, its effect ? OPD
7. Whether the plaintiff is estopped to file the present suit by its own act and conduct ? OPD
8. Whether the suit is not maintainable in the present form as alleged in para No.14 of additional objections ? OPD

9. Whether the suit is bad for non-joinder of necessary parties ? OPD
10. Relief.”

Learned counsel for the appellant further submitted that the both the Courts have committed illegality and perversity in returning the findings on issue No.1, onus of which was on the appellant-plaintiff but the respondent-defendant did not lead any evidence in terms of provision of Section 50 of the Indian Evidence Act except the solitary statement of DW9 no other witness has come forward, therefore, there was no compliance of the essential provisions of the law. Hoshier Singh was none else but also an relative. The self serving statement could not establish the relationship of Vijay Singh with Patori and of Patori with the Maman, therefore, they cannot be said to be Class II heirs. All the sale deeds have been obtained by fraud, which cannot be allowed to be perpetuated. In this background that suit aforementioned was filed. The appeal accompanied by application seeking condonation of delay was dismissed. Ultimately the matter was taken up in Hon'ble Supreme Court and the same has been remanded back for reconsideration. The appeal involves substantial question of law as formulated in memorandum of appeal.

Per contra Mr. Vinod S. Bhardwaj, Advocate appearing on behalf of resondents No.3 to 5, 7 to 9, 15, 16, 18, 20, 21, 23, 24, 28, 29, 30, 35 to 37, 39 to 42 and 45 submits that the appellant-plaintiff miserably failed to discharge the onus on issue No.1, nothing prevented them to produce on record the proceedings in the previous litigation pertaining to the judgment and decree dated 28.5.1974 wherein the relationship of Vijay

Singh with Patori and Patori with Maman was proved. The State was never owner of the property. Part of the property exchanged many hands and has been used by the respective persons and urged this Court for dismissal of the appeal, for, the concurrent findings of fact cannot interfered in the absence of substantial question of law or perversity.

In rebuttal Mr. Singla submitted that the State is not averse for giving up claim qua remaining unsold land in case this Court opines that the subsequent vendees are bona fide purchaser as per Section 41 of the Transfer of Property Act.

I have heard learned counsel for the parties, appraised the paper book.

Framing of issues and leading of the evidence on behalf of defendants of DW9 Hoshier Singh is not in dispute and also the provisions of Section 50 of the Indian Evidence Act. It is no matter of doubt that a person by leading evidence makes the Court to opine, with regard to the relationship with the person having a special means of knowledge on the subject and i.e. the member of the family viz a viz existence of such relationship. On perusal of the aforementioned issues as well as provisions of the Act I am of the view that the appellant-plaintiff miserably failed to discharge the onus as enshrined under Section 101 of the Indian Evidence Act. Nothing prevented the plaintiff to place on record the direct and positive evidence to prove that Vijay Singh was not class II heir of Maman claiming himself to be the son of Patori. There is no reference in the judgment with regard to the evidence led by Vijay Singh in a suit resulting

into passing of a judgment and decree dated 28.5.1974, rendered by this Court, in his favour That piece of evidence could have been confronted to the defendants as well as Hoshiar Singh but only suggestion with regard to the varacity the same was put to Hoshiar Singh. Nothing material surfaced despite usual cross-examination. On the contrary, respondents-defendants have been able to discharge the onus as per the provisions of Section 50 of the Indian Evidence Act. That piece of evidence was sufficient for the Court to form an opinion. It is also not in dispute that Government did not own the property but acquired ownership on account of escheat.

I am of the view that the judgment and decree cannot be faulted. No grounds for interference is made out muchless substantial question of law.

Dismissed.

January 25, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No