

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

RSA No.668 of 2011 (O&M)

Date of decision: 22.01.2018

Smt. Kanti

.....Appellant

Versus

Jeet Singh

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: None for the appellant.

Mr. Tarunvir Vashisht, Advocate,
for the respondent.

Ritu Bahri, J.

CM No.1812-C of 2011

In view of the averments mentioned in the application, same is allowed and delay of 70 days in re-filing of the appeal is condoned.

RSA No.668 of 2011

This appeal has been filed against the judgment dated 05.02.2010 passed by the Additional District Judge, Fatehabad, dismissing an appeal filed by plaintiff-appellant against the judgment and decree dated 21.08.2008 passed by the Civil Judge (Junior Division), Tohana, whereby suit filed by plaintiff-appellant for declaration, has been dismissed.

Smt. Kanti.-plaintiff (appellants herein) filed a suit for declaration alleging that she was owner in possession of the land measuring 179 Kanals 19 Marlas to the extent of $\frac{1}{4}$ share, measuring 45 Kanals 0 Marla comprised in Khewat No.47, Khatauni Nos.111 to 113, situated at village Mundlian,

Tehsil Tohana, District Fatehabad. The defendant had filed a civil suit

No.166-C dated 17.03.1986, titled as 'Baldev Singh vs. Kanti' in the Court of Sh. Dharampal, the then Sub Judge, Ist Class, Hisar, which was decreed on 24.03.1986. As per plaintiff, neither she had ever appeared in the said suit nor filed any written statement therein. In fact, the defendant had produced some other lady in her place for the purpose of procuring the fraudulent decree in his favour. It was further alleged that mutation sanctioned on the basis of the said decree was also illegal, null and void. Plaintiff never transferred possession of the suit land to the defendant on the basis of alleged decree, which was a paper transaction. Plaintiff came to know about the said decree when she contacted Halqa Patwari about one week before filing of the suit. Hence, the suit.

Upon notice, defendant-respondent filed written statement by taking preliminary objections with regard to maintainability of suit, estoppels, non-joining of necessary parties, court fee etc. On merits, it was stated that the plaintiff had transferred the suit land in favour of defendant by virtue of aforesaid decree dated 24.03.1986. In that suit, the plaintiff had engaged her counsel and filed written statement, on the basis of which, the said decree was passed. Thereafter, the defendant constructed his house and installed tubewell in the suit land. He was in possession over the suit land being owner, which was well within the knowledge of the plaintiff. The decree dated 24.03.1986 was legal & valid decree and the same was binding upon the rights of the plaintiff. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

Replication to the written statement was filed controverting the allegations made in the written statement and reiterating those of the plaint.

From the pleadings of the parties, following issues were framed

by the trial Court:-

1. Whether the decree passed in civil suit bearing No.166-C dated 17.03.1986, titled as 'Baldev Singh vs. Smt. Kanti' was illegal, null and valid? OPP
2. Whether the plaintiff is owner in possession of the suit land? OPP
3. Whether the suit filed by the plaintiff is not within the period of limitation? OPD
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the plaintiff is estopped from filing the present suit by her own act and conduct? OPD
6. Whether the suit of the plaintiff is bad on account of mis-joinder and non-joinder of necessary parties? OPD
7. Whether the suit of the plaintiff is properly valued for the purpose of Court fee? OPD
8. Whether the suit of the plaintiff has not been signed and verified by the proper and competent person? OPD
9. Whether the plaintiff has no cause of action to file the present suit? OPD
10. Relief.

Trial Court, after going through the evidence led by the parties, dismissed decreed the suit. Appeal against the said judgment also met the same fate.

Heard.

While dismissing the suit, both the Courts have returned concurrent finding of fact that Mr. Rajesh Kumar Bhanot, Advocate, had been engaged by Smt. Kanti as her counsel in civil suit titled as 'Baldev Singh vs. Smt. Kanti', decided on 18.03.1986 by way of executing a *vakalatnama* Ex.DW4/A in his favour, after which, he filed written statement Ex.DW4/B in the Court on behalf of Smt. Kanti, who also affixed

her thumb impressions admitting the contents as correct. Smt. Kanti appeared in the Court on 15.03.1986 and made a statement Ex.DW4/C in the Court, which was duly thumb marked by her. Sh. Jagmael Singh, retired Reader (DW-6), in his affidavit Ex.DW6/A, had stated that during the year 1986 while he was posted as Reader in the Court of Sh. Dharampal, the then Civil Judge, Hisar, he had recorded the statement of Smt. Kanti, Ex.DW6/B, under the supervision of the Court, after which, Smt. Kanti had affixed her thumb impressions admitting the contents as correct. Even in the judgment dated 24.03.1986 Ex.PF, it has been specifically mentioned that defendant Smt. Kanti had appeared in the Court and filed her written statement admitting the claim of the plaintiff. After that her statement was recorded and the suit was decreed vide judgment and decree dated 24.03.1986. Plaintiff-appellant did not lead any evidence that the above said decree was the result of fraud. Further, she did not lead any evidence to show that Baldev Singh had played any fraud upon her for the purpose of obtaining the said decree. After passing of the said decree, mutation was sanctioned and the same was held to be binding on the rights of the plaintiff. Moreover, as per Jamabandi for the year 1995-96 Ex.D5 and copies of Khasra Girdawaris from Kharif 1995 to Kharif 2005 Ex.D6 to Ex.D8, defendant-respondent had been recorded to be in possession of the suit land. The consent judgment and decree Ex.PE would attract the presumption of truth, as it was in the Court proceedings, where the plaintiff had appeared, given her thumb impressions and got recorded her statement.

By making reference to the judgment passed by Hon'ble the Supreme Court in **Mehar Chand Das vs. Lal Babu Siddique and others,** 2007 (2) RCR (Civil) 628, both the Courts have rightly given a finding that

the judgment and decree dated 24.03.1986 was legal and valid document and the same was binding upon the rights of the plaintiff. It has been further observed that the impugned judgment was passed on 24.03.1986, whereas the present suit has been filed on 03.08.2000, i.e. after the expiry of about 14 years when the said decree had already been implemented in the revenue record and in Jamabaandi Ex.D5, name of defendant-respondent had already been incorporated being owner in possession of the suit land. On this ground also, the suit has been rightly dismissed being time barred.

After going through the impugned judgments, this Court is of the view that the suit of the plaintiff-appellant has been rightly dismissed both the Courts below, as presence of Smt. Kanti (plaintiff) at the time of passing of judgment and decree dated 24.03.1986, filing of written statement and recording her statement before the Court, have been duly proved by leading cogent and convincing evidence. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

22.01.2018
ajp

(RITU BAHRI)
JUDGE

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