

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

RSA No.2847 of 2012

Date of decision: 21st April, 2018

Suresh Kumar

... Appellant

Versus

Narain Dutt

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Anil Kumar Bhardwaj, Advocate for the appellant.

Mr. R.S. Malik, Advocate
for the respondent.

FATEH DEEP SINGH, J.

In this regular second appeal the unsuccessful appellant Suresh Kumar, who had tasted the ignominy throughout two courts below when initially his suit stood dismissed through judgment dated 19.11.2010 by learned Civil Judge (Sr. Division), Sonapat followed by dismissal of his appeal by the Court of learned District Judge, Sonapat through impugned judgment dated 10.01.2012, has sought to challenge the same again before this Court.

After hearing Mr. Anil Kumar Bhardwaj, Advocate for the appellant; Mr. R.S. Malik, Advocate representing the respondent and perusing the records of the case.

Undisputedly, as is so the plaintiff claiming to be son of one Smt.Phulo alias Phulpati (now deceased) has filed a suit for declaration with permanent injunction against defendant Narain Dutt. The precise

grounds that have come about are that his mother Smt.Phulo alias Phulpati happens to be owner in possession of $\frac{1}{2}$ share of land measuring 76 Kanals 0 Marla situated in the revenue estate of village Roland Latifpur, Tehsil and District Sonapat, claiming that the defendant who is not the real brother of his mother, has managed to procure judgment and decree dated 27.04.1993 and thus, getting $\frac{1}{4}^{\text{th}}$ share of land owned by his mother measuring 19 Kanals 0 Marla.

The brief pleas raised are that his mother was illiterate, rustic village woman and had no knowledge whereas the defendant fraudulently and without disclosing real facts got passed the judgment and decree in question claiming further that a registered Will dated 28.12.1998 was executed by his mother in his favour and hence sought the relief in question.

The stand of the defendant is of total denial, who has resisted the suit of the plaintiff by claiming that neither the suit was maintainable and the same was barred by the act and conduct of the plaintiff, claiming that Smt.Phulo alias Phulpati who was the owner in possession of the land in question on her own through Civil Court decree dated 27.04.1993 has transferred it to the defendant as she had earlier taken a loan of Rs.15,000/- from the defendant on 09.07.1982 and as a consideration has handed over the land to him. After due formalities, the trial Court framed following issues:

1. Whether the decree dated 27.04.1993 passed in Civil Suit No.118 dated 31.03.1993 in case titled as Narain

Dutt versus Phooli is illegal, null and void and liable to be set aside? OPP

2. Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendant from interfering in the peaceful possession of the plaintiff over the property in dispute? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is barred by limitation? OPD
5. Relief.

Plaintiff himself testified as PW1 and examined Kuldeep Registration Clerk of the office of Sub Registrar Sonapat as PW2 and tendered death certificate Ex.P1, copy of Jamabandi for the year 2003-04 as Ex.P2, mutation Ex.P3 and Will Ex.P4.

The defendant on the other hand, examined DW1 Daya Nand Record Keeper, DW2 Daya Nand Verma Retired Reader and DW3 Ram Dutt Clerk of an Advocate. Defendant Narain Dutt himself appeared as DW4 and also examined Dharampal as DW5 and tendered into evidence copy of the statement of Smt.Phulo alias Phulpati Ex.D1 along with other documents Ex.D2 to Ex.D13 and closed his evidence, leading to passing of the impugned judgment.

The first and the foremost submission that has come about from the two sides and is so admitted, is that Smt.Phulo alias Phulpati

was owner in possession of ½ share of total land measuring 76 Kanals 0 Marla. Admittedly she died on 13.07.2007 and during her lifetime she never challenged the judgment and decree in question and it is only on 19.11.2011 the plaintiff has filed the present suit after more than 17 years and therefore bar of limitation certainly comes in the way of the plaintiff who has totally remained in oblivion to explain for that. The statement of Smt.Phulo alias Phulpati Ex.D1, that of her counsel Ex.D2 and other records of the Court including plaint, the written statements Ex.D4 irrefutably leads to the only and only irresistible conclusion that Smt.Phulo alias Phulpati had made a statement in a Court of law making an admission leading to passing of judgment and decree dated 27.04.1993 in respect of 1/4th share of her property measuring 19 Kanals 0 Marla. Admission, as defined in Section 17 of the Evidence Act, is a substantive piece of evidence though it is open to the person who made admission to show that the fact admitted is not correct but no one from the side of Smt.Phulo alias Phulpati has come forward to deny such proceedings at any point of time and therefore, is also barred by the principle of estoppel.

It is not the proven case even by the own testimony of the plaintiff as PW1 that there is either misrepresentation, commission of fraud or coercion by the present defendant, leading to passing of the judgment in question. As has been observed by the courts below that it was after the Presiding Officer enquired from Smt.Phulo alias Phulpati regarding correctness of the suit filed by the plaintiff, she has thumb

marked her statement who was identified by her lawyer and certified copy of the plaint was proved as Ex.D3 and that of the written statement as Ex.D4. Learned counsel for the appellant could not convince this Court how there has been impersonation, interpolation or mistaken belief which has led to the judgment in question. Since the plaintiff has filed the suit, onus lay heavily upon the plaintiff to have proved his case to the hilt by preponderance of probabilities and he cannot be allowed to take undue benefits of the weaknesses of the defendant's case. Reliance placed on **'Punjab Urban Development Authority v. Shiv Saraswati Iron and Steel Re-rolling Mills'** 1998(1) PLJ 643 SC. Besides this, what has come to be argued by the two sides, entries in the revenue records Ex.D1 to Ex.D5 were made way back in the year 1994 as mutation was sanctioned in that year and was projected in the first jamabandi for the year 1998-99 Ex.D11 and for the year 2003-04 Ex.D12, and corresponding Khasra Girdawaris and how the plaintiff, who consequent upon the admitted death of Smt.Phulo alias Phulpati on 13.07.2007 slept over the matter till filing of the present suit on 19.11.2010 and claiming that he had been cultivating the land in question throughout.

No issue regarding the Will was ever framed by the courts below though an inference is sought to be drawn in the impugned findings. Being a suit for declaration, certainly it has been rightly remarked in the impugned findings that the suit was hopelessly time barred. From the revenue records proved before this Court, it leads to unimpeachable evidence that the plaintiff never happened to be in

possession of the property and in the absence of seeking relief of possession certainly also comes to his detriment. No other argument was raised by the counsel. Thus the findings drawn by the courts below are perfect appreciation of evidence and the law and needs to be upheld. The appeal being hopelessly without merit stands dismissed. Records be sent back.

Keeping in view that the appellant intentionally and fully aware of the merits of his case, has unnecessarily wasted valuable time of the courts and has put to inconvenience the administration of justice, impels this Court to impose special costs to the tune of Rs.1.00 lac which shall be deposited with the District Legal Services Authority, Sonipat and which, if not paid, shall be recovered as arrears of land revenue.

(FATEH DEEP SINGH)
JUDGE

April 21, 2018

rps

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