

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

RSA No.4303 of 2012 (O&M)

Date of decision:19.12.2018

Sham Singh and others

... Appellants

Vs.

Jangir Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amarjeet Singh Ahluwalia, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.11940-C of 2012

For the reasons stated in the application which is duly supported by an affidavit, delay of 726 days in re-filing the appeal, is condoned.

C.M. stands allowed.

RSA No.4303 of 2012 (O&M)

The present Regular Second Appeal has arisen out of decision of civil suit filed by Gurnam Singh, Sham Singh and Jagdev Singh, sons of Inder Kaur, plaintiffs. They have filed the civil suit bearing no.03 of 2000 challenging the judgment and decree dated 30.08.1996 rendered by the Additional District Judge, Bathinda arising out of judgment and decree dated 09.12.1992 rendered in civil suit no.241 of 1988 titled as Ranjit Singh vs. Sawaranjit Singh etc.

Prem Singh was owner of land measuring 95 kanal 1 marla in village Nathana, Tehsil and District Bathinda and some piece of land in village Patti Kalan Mehraj. He had seven children, i.e., three sons, Balwant Singh, Dalip Singh and Ranjit Singh and four daughters, Inder Kaur, Bhagwan Kaur, Ranjit Kaur and Jangir Kaur.

Ranjit Singh son of Prem Singh instituted the suit bearing No.241 of 1988 claiming declaration and permanent injunction on the premise that he alongwith defendants no.6 to 10 ,i.e., Jangir Kaur, Dalip Singh, Inder Kaur, Bhagwan Kaur and Ranjit Kaur, being brothers and sisters were owners in possession in equal share of the land described in the suit.

The aforementioned suit was dismissed by the trial Court, vide judgment and decree dated 09.12.1992. The Lower Appellate Court in appeal, vide judgment and decree dated 30.08.1996, decreed the suit and held Ranjit Singh alongwith other brothers and sisters i.e., defendants no.6 to 10 as mentioned above to be owners in possession in equal share. Inder Kaur during the pendency of the appeal, died on 01.03.1994.

The present appellant-plaintiffs challenged the judgment and decree dated 30.08.1996 under mis-apprehension that share of their mother Inder Kaur had not been kept intact owing to the fact that she was arrayed as respondent no.12 before the Lower Appellate Court resulting into judgment and decree dated 30.08.1996. The trial Court dismissed the suit and they were also not successful before the Lower Appellate Court.

Mr. Amarjeet Singh Ahluwalia, learned counsel for the

appellants submitted that the Lower Appellate Court while dismissing the appeal observed in paragraph 16 as under:-

“16. As per Ex.P5, which was decided on 09.12.1992, it is clear that mother of the appellants, who was impleaded as defendant no.8 was very much alive and further at the time of filing of the appeal by Ranjit Singh on 02-02-1993 Ind Kaur above was alive. Learned trial Court has rightly observed that mutation on the basis of judgment and decree under challenge in the present suit has already been mentioned and the appellants have not preferred any appeal or revision against the same and from the record it transpires that PW2-Gurnam Singh son of Atma Singh has purchased the land measuring 123 kanals 11 marlas vide sale deed Ex.P1. So far as the contention of the learned counsel for the appellants that Balwant Singh had no authority to affect compromise is concerned, the same is liable to be ignored being beyond pleadings as neither said Balwant Singh nor his legal heirs has been impleaded party in the present suit and from the record, it is clear that at the time of decision of Ex.P5, mother of the appellant was alive and she was ex parte in that suit and the appeal preferred by Ranjit Singh on 02.02.1993 and at that time, mother of the appellants was alive as she died on 09.03.1994 and in that appeal also, respondents no.1 to 3 contested the said appeal and Ind Kaur respondent no.4 did not come forward and now appellants have

no right to challenge the above said judgment and decree by filing the present suit on 03.01.2000 and at the most appellants could challenge the judgment and decree regarding the land to the extent of 1/7th share of their mother, whereas, vide judgment and decree dated 30.08.1996 appellant-Ranjit Singh alongwith respondents no.6 to 10 were declared owner in possession in equal share and as such, appellants have no right to challenge the same.”

It is owing to that effect the present appeal has been filed, for, judgment and decree dated 30.08.1996 has been construed instead of defendants no.6 to 10 as respondents no.6 to 10, who were alien to the controversy.

I have heard the learned counsel for the appellants, appraised the judgments and decrees of both the Courts below and of the view that expression “respondents no.6 to 10” is misname, for, decree of the Lower Appellate Court dated 30.08.1996 conferred the co-ownership to all the siblings i.e., plaintiff, Ranjit Singh and defendants no.6 to 10. For the sake of brevity, operative part of the decree and as well as memo of parties in civil suit no.241 of 1988 read as under:-

“Ranjit Singh

plaintiff

Versus

Swaranjit Singh and others

defendants

The appellants above named appeal to the Court of District Judge, Bathinda from the court of Sh.Lakhbir Singh PCS,

Senior S.Judge, Bathinda in the above suit dated 9th day of December, 1992 for the reasons set out in the grounds of appeal.

The appeal coming on for hearing on the 30th day of August 1996 before Shri R.G.Ahluwalia, Additional District Judge, Bathinda, in the presence of M.S.Sra counsel for appellant and of Shri A.K.Bansal, counsel for the respondents no.1 to 3, it is ordered that I accept the appeal filed by the plaintiff/appellant, with costs and suit of the plaintiff is decreed for declaration that he alongwith defendants no.6 to 10 are owners in possession in equal shares of land detailed in the head note of the plaint, situated in village Nathana and defendants no.1 to 3 are further restrained from alienating the suit property in any manner and also interfering in their possession except in due course of law. The costs of the appeal as detailed below amounting to Rs.445.25 p are to be paid by respondents.

The costs of the original suit are to be paid by_____

COSTS OF APPEAL			
<i>Appellant</i> <i>Rs.</i>	<i>Rs.</i>		<i>Respondent</i>
1. Stamp for memo random of appeal	32.5	Stamp for petition	--
2. Stamp for power	1.25	Stamp for power	1.25
3. Stamp for process	1900	Stamp for process	--
4. Pleader's fee	32.5	Pleader's fee	32.5
5. Misce3llaneous	360	Miscellaneous	--
Total	445.25	Total	33.75

Given under my hand and seal of the Court this 30th day of

August 1996.”

Ranjit Singh son of Prem Singh son of Kala Singh, resident of Village Nathana, Tehsil and District Bathinda.

.....Appellant

Versus

1. Swaranjit Singh son
2. Gurcharanjit Singh alias Gurcharan Singh son,
3. Smt Gurnam Kaur widow
4. Harjinder Kaur daughter
5. Guddi daughter of Balwant Singh
Residents of Village Sauli, P.S Shauli, near Halwara Air
Force Station, District Ludhiana.
6. Jangir Kaur wife of Ranjit Singh son of Prem Singh;
7. Dalip Singh son of Prem Singh
Both residents of village Nathana, Tehsil & Distt
Bathinda;
8. Inder Kaur daughter of Prem Singh now wife of Nazir
Singh, resident of Village Tut, Tehsil and District
Ferozepur.
9. Bhagwan Kaur daughter of Prem Singh now wife of
Kirpal Singh, resident of Village Singhpura, teh. & Distt
Sirsa;
10. Ranjit Kaur daughter of Prem Singh now wife of Darbara
Singh son of Ajmer Singh, resident of Village Rameana,

Tehsil and District Faridkot.

....Defendants”

The judgment and decree dated 30.08.1996 has conferred the joint ownership in favour of plaintiff-Ranjit Singh and defendants no.6 to 10 and not respondents no.6 to 10 in the appeal before the Lower Appellate Court. Once Inder Kaur's interest was being protected, sons would not have any independent cause of action.

With the aforementioned observation, the appeal stands disposed of.

(AMIT RAWAL)
JUDGE

December 19, 2018
savita

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