

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

RSA No. 5065 of 2012

Date of Decision:-16.01.2018

Shubhinder Singh

...Appellant

Versus

Smt. Geetinder Kaur and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Pritam Saini, Advocate
for the appellant.

Mr. Vikas Behl, Sr. Advocate with
Ms. Balpreet Sidhu, Advocate
for respondent No.1.

AMIT RAWAL J.

The appellant-plaintiff being the successor in interest of Smt. Rajinder Kaur has filed the present appeal against the concurrent findings of both the Courts below whereby the suit claiming following relief, has been dismissed :-

“Suit for Declaration to the effect that the plaintiff is owner in possession of land measuring 164 Kanal 1 Marla comprised in Khewat No.102 Khatauni No.254 and 255, Rectangle No.26, Killa No.22/2 (0-5), Rect. 28, Killa No.1/2 (2-5), 2(7-11), 11(800), 12(8-0), 13/1 (5-11), 13/2 (2-9), 14(7-8), 15/2 (0-2), 16(7-7), 17/1 (0-18),

18/1 (1-18), 20/1 (4-8), Rect. 29, Killa No.11/2 (1-0), 20 (8-0), Rect. 33, Killa 1/2 (6-03), 2 (7-0), 8/2/1 (4-12), Rect. 34, Killa No. 2/2 (1-14), 3/2(3-4), 4/2 (4-9), 5/2 (5-18), 9/1/5/10 (8-0), 19/1 (3-0), Rect 84 Killa No.1 (8-0), 3/2 (3-0), Khasra No.138 min (4-19), Rect. No.84, Killa No.2 (8-0), 3/2 (3-0), Khasra No.138 min (4-19), Rect No.84, Killa No. 2(8-0) as per copy of jamabandi for the year 1985-86 situated in the revenue estate of village Goneana, Tehsil Muktsar Habdast No.62, and the judgment and decree dated 15.11.1990 in case titled as Satinderjit Singh etc. vs. Rajinder Kaur decided by the Court of Sh. B.K. Gaur, Sub Judge 1st Class, Muktsar in favour of defendant No.1 and Lt. Satinderjit Singh is ineffective on the rights of the plaintiff being against facts and law and without the knowledge and consent of the plaintiff as the plaintiff never suffered such a decree, neither filed any such written statement nor appeared in any court nor made any statement admitting the claim of defendant No.1 and Satinderjit Singh in that case and as such the decree and judgment are null and void ab initio and Mutation No.2390 sanctioned on the basis of so called decree is also bad in law and the judgment and decree and order sanctioning the mutation are liable to be set aside and with consequential relief.

AND

For grant of a decree for permanent injunction restraining the defendant No.1 from alienating any part of the above said land on the basis of above said decree and mutation, in any way to any person, vide documentary and oral evidence of all kinds.”

Mr. Pritam Saini, Advocate learned counsel appearing for the

appellant-plaintiff submitted that the suit aforementioned was filed by challenging the judgment and decree dated 15.11.1990 seeking declaration that plaintiff was owner in possession of land measuring 164 Kanal 1 Marla situated in the revenue estate of Village Goneana, Tehsil and District Sri Muktsar Sahib. The aforementioned judgment and decree ordered in favour of Satinderjit Singh now represented by Smt. Geetinder Kaur-defendant No.1 and other legal heirs, was outcome of a fraud and misrepresentation. The aforementioned fraud surfaced only on account of death of her son Satinderjit Singh who died on 10.8.1997 and immediately thereafter the suit was filed in the year 1997. Even the mutation entered and decree was also liable to be set aside. The plaintiff also pleaded that she used to reside at Sri Muktsar Sahib with her son. Major Satinderjit Singh and his wife i.e. defendant No.4 and the sons i.e. defendants No.2 and 3 whereas Geetinder Kaur-defendant No.1 was married to Shri Naveen Grewal. Plaintiff was dependent upon Satinderjit Singh, her son, who usually got her signatures on various papers on the pretext that they were required for residential purposes.

It was next contended that the suit was contested by defendant No.5 who was proceeded ex-parte. The suit was contested but only defendant No.1 filed written statement whereas defendants No.2 and 3 did not file the written statement. The maintainability of the suit being barred by the limitation, misjoinder and non-joinder and usual objections were taken but the defendants relied upon some settlement dated 8.5.1990, compromise dated 1.6.1990 and decree dated 1.6.1990. Major Satinderjit

Singh was managing the agricultural land which was spread over primarily in three villages and the other grand-sons had eyes on the entire property. Another suit titled as Major Satinderjit Singh vs. Tejinder Singh Brar and others was filed on 22.4.1989. The suit was for restraining the defendants from entering the ancestral house known as Shera Wala House Tibbi, Sahib Road, Sri Muktsar Sahib. An interim injunction was granted in favour of Satinderjit Singh and plaintiff Rajinder Kaur in the present suit. Even the criminal complaint was also filed by Major Satinderjit Singh on 30.5.1989 before the concerned Magistrate wherein a Tractor stated to be stolen by the defendants. A dispute arose between the parties but the same was resolved through a family settlement dated 8.5.1990 which was duly executed and signed by Major Satinderjit Singh, Rajinder Kaur (plaintiff) and Shubhinder Singh Brar-defendant No.3, Nirmal Kaur-defendant No.4, Nirmal Singh, Mahabir Singh, Jasbir Kaur, Tejinder Singh defendant No.2 through their general power of attorney Shubhinder Singh and on the basis of the aforesaid settlement defendants No.2 and 3 and one Mahabir Singh, Nirmal Singh and Jasbir Kaur filed a suit against major Satinderjit Singh. Nirmal Kaur-defendant No.4 and Rajinder Kaur-plaintiff sought a decree in accordance with the family settlement. The suit was filed on 23.5.1990 to which defendant Nos.2 and 3 had signed. Alongwith the suit defendant No.2 and 3 filed a compromise on the basis of settlement dated 8.5.1990.

The trial Court decreed the suit on 1.6.1990 and the complaint filed by major Satinderjit Singh was dismissed as he did not appear being complainant. As per the aforementioned settlement/compromise, the land

which was under the ownership of Rajinder Kaur fell to the share of Major Satinderjit Singh. In other words Major Satinderjit Singh and Geetinder Kaur defendant No.1 in the present suit became the owner in possession of the land. For the purpose of getting the revenue record changed, a civil suit was filed by major Satinderjit Singh and Geetinder Kaur in which Rajinder Kaur was made a defendant. Rajinder Kaur filed written statement through her Advocate admitting therein the claim. A decree dated 15.11.1990 under challenge, was passed. The suit was barred by limitation as 7 years had gone by in filing the suit. Major Satinderjit Singh during his life time had also executed a registered Will dated 19.11.1993. It was next submitted that the defendants have not been able to bring on record the decree dated 1.6.1990 claiming ownership. Both the Courts below have wrongly and illegally held that the suit was barred by law of limitation whereas it was specifically averred that after the death of Satinderjit Singh, the plaintiff on acquisition of the knowledge of the decree immediately instituted a suit on 4.10.1997 after the death of Satinderjit Singh on 10.8.1997, therefore the question of limitation could not come in the way.

The plaintiff based her claim that major Satinderjit Singh and Geetinder Kaur played a fraud upon her and ingredients of Order 6 Rule 4 CPC have been proved to the hilt. In fact the blank papers were misused. She was not apprised about passing of the decree and kept in dark. The plaintiff though submitted an affidavit in examination-in-chief that during her life time a Local Commissioner was appointed for cross-examination but she was not cross-examined and Court drew adverse inference. In fact

on 27.2.1999 when her statement was to be recorded in the clinic of Dr. Zora Singh, the lawyers of District Courts were on strike and therefore the Local Commissioner could not record the statement. She was apprised that in view of the strike, the Local Commissioner would not come and therefore she did not appear for cross-examination. Even the counsel for the plaintiff was not present on that day, thus, opportunity of hearing was required to be granted to the plaintiff to lead evidence.

The Courts below have also taken adverse inference that in the decree sought to be challenged, the plaintiff appeared and moved an application for early hearing through counsel Shri Babu Singh Sidhu, Advocate, whereas it has not been proved on record that Rajinder Kaur was personally known to that Advocate as Mr. Sidhu was the counsel for defendant No.1-Geetinder Kaur. The lower Appellate Court had also not taken into consideration other litigations pending between the parties. In support of his contention relied upon the judgment rendered by this Court in **Smt. Sukhdevi vs. Smt. Ram Piari 2014(63) RCR (Civil) 360** and **Yellapu Uma Maheshwari and another Buddha Jagadheeswararao and others 2015(4) RCR (Civil) 765.**

Per Contra Mr. Vikas Behl, Advocate learned senior counsel assisted by Ms. Balpreet Kaur, Advocate submitted that there is no illegality or perversity in the judgment under challenge as no substantial question of law arises as plaintiff failed to prove the case. There was no challenge to the decree dated 1.6.1990. Rajinder Kaur did not prove ingredients of any fraud and misrepresentation.

On the contrary, DW7 Reader of the concerned Court was summoned. He proved that Rajinder Kaur had recorded her statement on the dictation of the Presiding Officer, which was read over and explained to her and she appended her signatures on the statement Ex.DW7/A. She was also identified by Shri B.S. Sidhu, Advocate. The statement was signed by the then Sub Judge Shri B.K. Gaur, PCS, Sri Muktsar Sahib. All these facts have been proved thus the question of any fraud being played upon her did not rise. Even the suit was also barred by law of limitation and no explanation came forth for not challenging the suit within a period of three years from the date of passing of decree much less for not appearing before the Local Commissioner to get her statement recorded as the Local Commissioner was to record the statement outside the Court Room. The Local Commissioner report had been produced on record as Ex.DW9/B. The plaintiff did not prove the averments in the suit and urges this Court for dismissal of the appeal. The ingredients of fraud have not been proved. The intentional delay for conducting the cross-examination as they were afraid that the truth would surface or Rajinder Kaur would not be able to stand the wrath of the cross-examination.

I have heard learned counsel for the parties, appraised the paper book and record of the Courts below and of the view that there is no force in the merit of submission of Mr. Saini, Advocate and the appeal is liable to be dismissed for the following reasons :-

- (i) The plaintiff had to stand on her own legs to prove entire case to challenge the decree. Since the foundation of the

suit was on account of fraud having played muchless the use of blank papers but the fact of the matter is that no such evidence as per the provision of Order 6 Rule 4 CPC have been placed on record. The averments of the plaint have to be proved by direct, positive and cogent evidence. The onus was upon the plaintiff to lay to the challenge to the decree dated 1.6.1990 and not upon the defendants. The decree dated 1.6.1990 conferred a title upon Satinderjit Singh and Geetinder Kaur defendants but no challenge was laid except the decree dated 15.11.1990 which was only submitted to revenue authorities for the purpose of getting the mutation effected i.e. to correct the revenue record. No evidence qua the signatures which were actually stated to be appended by playing a fraud or not, is produced on record. If at all a fraud had been played nothing prevented Rajinder Kaur for lodging an FIR.

On the contrary, the defendants proved that Rajinder Kaur appended her signatures on account of her own free will without any pressure. Even the expert proved that her statement DW7/A was recorded before the Presiding Officer resulting into the decree dated 15.11.1990 under challenge.

In my view the plaintiff has miserably failed to discharge the

onus as per Section 101 of the Indian Evidence Act.

Coming to the judgments relied upon by Mr. Pritam Saini, Advocate, I am of the view that as per the provisions of Order 23 Rule 3 CPC even if the compromise decree was passed without consent of all the parties, it would be void but required to be set aside by filing a suit within the prescribed period of limitation. No explanation has come forward for not challenging the decree within a period of three years from the passing of the decree. The suit was filed, as noticed above, in the month of October 1997 whereas the decree is of 15.11.1990. The death of Rajinder Kaur would not extend the period of limitation as in pursuant of the decree above mutation had already been effected. The record maintained by the Revenue Authority is the public record and mere ignorance of law would not be a bliss enabling the plaintiff to extend the period of limitation by raising the plea of having acquired the knowledge. On account of death of Satinderjit Singh, one of the beneficiary of the decree, the aforementioned view of mine is being derived from the ratio decidendi culled out in **Sneh Gupta vs. Devi Sarup and others 2009(2) RCR (Civil) 129.** The decree aforementioned was not required to be registered as the son had a pre-existing right in the aforementioned property. Thus, the judgment relied upon by Mr. Pritam Saini, Advocate would not come to rescue to differ with the finding of fact and the law recorded by both the Courts below.

As an upshot of my findings, the findings of the Courts below being a Court of fact and law did not call for interference enabling this Court to form a different opinion when the one arrived at. No substantial

question of law arises for adjudication. Resultantly, the appeal stands dismissed.

January 16, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No