

102

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2699-2016 (O&M)
Date of decision : 28.02.2018

Manjit Kaur

... Appellant(s)

Versus

Didar Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate
for the appellant(s).

AMIT RAWAL, J. (ORAL)
CM No.7232-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 45 days in filing the appeal is condoned.

RSA-2699-2016

The appellant-plaintiff No.2 is aggrieved of the concurrent findings of fact, whereby the suit claiming ownership of the suit property by challenging the judgment and decree dated 25.11.1992 rendered in Civil Suit No.724 of 1992 titled as “Didar Singh and others V/s Kesra Singh” and the judgment and decree dated 04.04.1995 rendered in Civil Suit No.74 of 1994 titled as “Kulwinder Singh V/s Kesra Singh and others”, mutation No.3032 sanctioned on 12.02.1993 in favour of defendant Nos.1 to 3, being illegal, null and void and with a consequent relief of permanent injunction restraining the defendant Nos.1 to 3 from alienating the suit land by way of

sale, gift mortgage exchange transfer, Will etc., has been dismissed by the trial Court and upheld by the lower Appellate Court.

It would be apt to give preface of the matter before adverting to the rival contention of learned counsel for the appellant-plaintiff No.2.

The suit had been filed by Ravinder Kaur and Manjit Kaur daughter of Kulwant Kaur daughter of Kesra Singh regarding estate of Kesra Singh i.e. grandfather against nephews/defendant No.1 to 3 and defendant No.4, being brother of the appellant-plaintiff No.2 i.e. son of Kulwant Kaur, on the premise that Kesra Singh died intestate and decree executed by him, during his lifetime, in favour of the defendants including her brother was illegal, null and void as the fraud had been played. Kesra Singh could not have deprived the grand-daughters from his property as they had right as per the Hindu Succession Act. Kesra Singh had only one daughter Kulwant Kaur, who was married to Dalip Singh and appellant-plaintiff and defendant No.4 were born from their wedlock. The judgment is based upon the wrong assertion as there was no question of family settlement, for, the judgment and decree under challenge, did not affect their right being Class-I heirs.

The aforementioned suit was contested by defendant Nos.1 to 3 by filing the joint written statement admitting that Kesra Singh was the owner of the suit property, but the rest of the allegations were denied. It was also alleged the suit was barred by law of limitation as the suit was filed in the year 2006. In the second suit bearing No.74 of 1994, the plaintiffs were arrayed as defendants, though the aforementioned suit was dismissed in default, but the factum of decree of 1995 was in the knowledge and no

explanation has come forth in challenging the same after a gap of almost of 11 years. The defendants served Kesra Singh in old age with every facility and owing to the services, Kesra Singh had also executed a registered Will dated 28.02.1994. Defendant No.4 appeared and filed a written statement by admitting the relationship and pedigree table, much less, ownership of the property by Kesra Singh, being maternal grandfather and also the decrees of 1992 and 1995. On the basis of the aforementioned pleadings, the trial Court framed the following issues:-

“1. Whether the plaintiffs are entitled to the declaration to the effect that they and defendant No.4 are joint owners in possession in equal shares of the land of Kesra Singh along with the share of shamlat and other rights appurtenant to the land situated at village Duralll, Hadbast No.1, Tehsil and District Mohali? OPP

2. Whether the plaintiffs are entitled to the declaration that the judgment and decree dated 25.11.1992 passed in civil suit No.724 of 3.11.1992 titled as “Didar Singh and other vs. Kesra Singh is null and void and ineffective and against the legal rights of the plaintiffs as it was collusive between the defendants and the same is result of fraud committed by the defendants with the Court as well as with the plaintiffs? OPP.

3. Whether the plaintiffs are entitled to the judgment and decree dated 4.4.1995 passed in civil suit No.74 of 10.2.1994 titled as Kulwinder Singh vs Kesra Singh and others is null and void ineffective and against the legal rights of the plaintiffs and the same is the result of fraud committed by the defendants with the Court as well as the plaintiffs? OPP.

4. Whether the plaintiffs are entitled to the declaration that the mutation NO.3032 dated 12.2.1993 in favour of defendants No.1 to 3 is illegal, null and void and has no value in the eyes of law and the names of the defendants No.1 to 3 entitled in the

subsequent jamabandies is liable to be set aside?

5. *Whether the plaintiffs are entitled to the permanent injunction restraining defendant Nos.1 to 3 from alienating the suit land situated in the area of village Dural, Hadbast, Tehsil and District Mohali, as per the jambandi for the year 2000-2001 by way of sale gift, mortgage, exchange, transfer, Will, power of attorney etc., in any other manner? OPP.*

6. *Whether the property in the hands of Kesra Singh was the ancestral property? OPP*

7. *Whether the plaintiffs have no cause of action to file the present suit? OPD*

8. *Whether the suit of the plaintiffs is not properly valued for the purposes of court fee and jurisdiction? OPD*

9. *Whether the suit of the plaintiffs is time barred? OPD*

10. *Whether the suit of the plaintiffs is barred by the principle of res judicate OPD*

11. *Whether the suit of the plaintiffs is barred under Order 2 Rule 2 CPC? OPD*

12. *Whether the suit of the plaintiffs is not maintainable in the present form? OPD*

13. *Whether the plaintiffs have no locus standi to file the present suit? OPD*

14. *Whether the plaintiffs have not come to the court with clean hands? OPD.*

14-A. *Whether Kesra Singh executed a valid registered Will dated 28.2.1994 in favour of the defendants No.1 to 3 in sound deposing mind? OPD*

15. *Relief.”*

The appellant-plaintiffs appeared as PW-1 & PW-2 and examined Devinder Singh as PW-3 and closed their evidence, whereas the defendant examined Vijay Chaudhary, Advocate as DW-1, Jarnail Singh as DW-2, Harnam Singh as DW-3 and tendered into evidence the documents

i.e. attendance certificates of Didar Singh, Balwant Singh and Jarnail Singh Ex.D11 to Ex.D13 and death certificate of Tehal Singh Ex.D14 and closed their evidence. On the basis of the preponderance of the evidence, the trial Court dismissed the suit and the appeal preferred thereto before the lower Appellate Court also met with the same fate.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellant-plaintiff No.2 submits that both the Courts below have committed illegality and perversity in dismissing the suit as neither decree could take away the right of the appellant, who had 1/3rd share in the estate of maternal grand-father nor the Will dated 28.02.1994 had been proved as it was a forged and fabricated document. The written statement filed by Kesra Singh in 1992 decree bore a date prior to the filing of the suit which shows that he had been misrepresented. Even the application for additional evidence under Order 41 Rule 27 CPC for challenging the Will and as well as amendment of the written statement under Order 6 Rule 17 CPC owing to the fact that certain pleadings by laying challenge to the decree had not been averred, has erroneously been dismissed. The decree dated 25.11.1992 clearly specified that it would not affect the right, title and interest of any rightful and better claimant of the property, in dispute, therefore, the Will would not have any application owing to the terms and conditions of the decree. The Will has also not been proved in accordance with the provisions of Section 68 of the Indian Evidence and as well as Section 63 of the Indian Succession Act, thus, urges this Court for setting aside the judgments and decrees, under challenge, by formulating the substantial questions of law as culled out in the memorandum of appeal.

I have heard the learned counsel for the appellant-plaintiff No.2 and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Goel, for, Kesra Singh, all the period, was alive and he died much later. During all this period, he did not challenge the aforementioned decree. Had some fraud been played upon him, nothing prevented Kesra Singh to lodge appropriate proceedings both civil and criminal. Even otherwise, it is not only the nephew of Kesra Singh, who had been bequeathed with the property by virtue of the decrees, but the brother of the appellant-plaintiff No.2, who supported his cousin brothers. The relation of Kulwant Kaur being only daughter of Kesra Singh and plaintiff Nos.1 & 2 and defendant No.4, being material grand-children is not in controversy. Manjit Kaur/appellant-plaintiff No.2, in the cross-examination, admitted the execution of the Will. No explanation has come forward or any averment has been pleaded with regard to the laying any challenge to the aforementioned Will. The plaintiff had the knowledge of the aforementioned Will, much less, decree as in the second suit i.e. Civil No.74 of 1994, there was a reference of the decree dated 25.11.1992. No explanation has come forth in filing the suit in the year 2006. The suit *ex facie* was barred by law of limitation. The plaintiff could not take the benefit of the provisions of Article 59 of the Limitation Act to challenge the decree within a period of three years from the date of execution of the same. Both the Courts below have rightly dismissed the suit. Even the expressions given in the decree, as noticed above, would not affect the right of the beneficiaries.

For the reasons reasons, I do not find any illegality and

perversity in the judgments and decrees rendered by the Courts below as the same are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the regular second appeal is dismissed.

28.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No