

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

RSA No.1779 of 2015

Date of decision: 24.04.2018

Dharambir

... Appellant

Versus

Jai Parkash (now deceased) through LRs

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Manvir Singh Rana, Advocate
for the appellant.

None for the caveator-respondent No.2.

AMIT RAWAL J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the civil suit bearing No.42 of 2009 claiming declaration by challenging the judgment and decree dated 31.07.1993 and release deed No.1436 dated 03.07.2001 has been dismissed by the trial Court and affirmed by the lower Appellate Court.

The appellant-plaintiff instituted the suit in the year 2009 challenging the aforementioned document on the premise that the property at the hand of defendant No.1-Jai Parkash and father of plaintiff was ancestral as inherited from Harphool Singh i.e. grandfather of the plaintiff. At the time when the decree was passed, the appellant-plaintiff was minor and was sued through his father i.e. defendant No.1, Jai Parkash whereby only 1/4th share has been granted in his favour. The release deed dated 3.7.2001 in favour of Bimla Devi-defendant No.3 was also void and illegal, for, she did not prove that she was legally wedded wife of Jai Parkash.

The aforementioned suit was contested by the defendant No.1 and 3 by filing joint written statement and took various preliminary objections qua maintainability, limitation and nature and character of the property being ancestral was emphatically denied.

The trial Court on the basis of aforementioned pleadings framed as many as 10 issues including the issue of relief. The plaintiff in support his evidence examined Ram Rati as PW1, himself as PW2 and Ashok Kumar Patwar Moharer as PW3. The defendant namely Bimla examined herself as DW1, Rambir as DW2, Ramesh Kumar as DW3 and Yashwant Singh as DW4 and tendered documents Ex.DW1/A, DW2/A and DW5/A.

The trial Court on the basis of evidence dismissed the suit holding that the plaintiff was estopped from filing the present suit after withdrawal of the previous suit Ex.D5 vide judgment Ex.D6. The aforementioned judgment and decree was assailed before the lower Appellate Court, which has also been dismissed.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Manvir Singh Rana appearing for the appellant-plaintiff in support of memorandum of appeal has raised the following submissions:-

- (i) It was the title suit, therefore, the Court could not have non-suited the appellant-plaintiff on the ground of limitation.
- (ii) The appellant-plaintiff was arrayed through this father and he did not protect his interest as he was minor at the relevant point of time.
- (iii) Bimla Devi had not been proved as wife of Jai Parkash as no evidence had been led in that regard.

(iv) The nature and character of the property at the hands of Harphool Singh was ancestral, therefore, the aforementioned decree and the release deed could not have been suffered.

All these factors have totally been ignored by the Courts below, therefore, there is mis-direction and abdication.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Jain for the following reasons:-

(i) Concededly, the appellant-plaintiff attained the majority on 10.07.2002 whereas the suit had been filed in the year 2009.

(ii) The property at the hands of Harphool Singh had not been proved to be ancestral as the revenue record brought on record only showed inheritance of Jai Parkash and Harphool Singh and not from three generations in lineage, therefore, the provisions of Para 223 of the Mulla's 16th Edition would not come to the rescue of the appellant.

(iii) Concededly, the appellant-plaintiff instituted the suit of similar nature, which was withdrawn on 7.2.2004 without any permission from the Court to file fresh one. The previous suit and the judgment has been proved on record as Ex.D5 and D6.

In my view, the suit filed in the year 2009 i.e. after seven years of obtaining the majority, was not maintainable. At the best, an application should have been moved for recalling of the judgment, if at all, the advocate had withdrawn the suit without instructions of the appellant-plaintiff.

All these points have been taken care of by the Courts below in non-suiting the appellant-plaintiff. The arguments of Mr. Jain have not been able to bring the case within the realm of illegality and perversity to

form a different opinion than the one arrived at by the Courts below. No ground for interference is made out. The second appeal stands dismissed.

April 24, 2018
Pankaj*

(AMIT RAWAL)
JUDGE

Whether speaking / reasoned: Yes

Whether Reportable: No