

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-2120-2015 (O&M)
Date of Decision: 03.07.2018

Smt. Daropti & others

--Appellants

Versus

Usha Rani & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. N.S. Chahal, Advocate for the appellants.

TEJINDER SINGH DHINDSA.J (Oral)

CM-5519-C-2015

For the reasons stated in the application, same is allowed and the delay of 32 days in re-filing the appeal stands condoned.

Main Appeal

The plaintiffs/appellants are in second appeal before this Court having remained unsuccessful in both the courts below.

Briefly noticed the plaintiffs/appellants filed a suit for declaration to the effect that mutation no.3697 is illegal, null, void and not binding upon the rights of the plaintiffs. Further declaration sought was to declare them as co-owners to the extent of 5/12 share each and defendants no.1 and 2 to the extent of 1/12 share each in the suit property. The details of the suit land measuring 24 kanals 2 marlas were furnished in para no.1 of the plaint and was stated to be initially owned by Sukh Ram i.e. common ancestor of the parties. Upon demise of Sukh Ram the suit property is stated to have been inherited by Belu Ram and on his death in the year 1938, suit property was inherited by Ram Lal and such property is ancestral/coparcenary property. On the death of Ram Lal in the year 1994, mutation no.3967 was got sanctioned by defendant no.1 in connivance with

the revenue officials in favour of defendants, plaintiff no.2 and Mukandi Lal (predecessor of plaintiffs no.1 to 8) in equal shares and such mutation is not binding on the rights of the plaintiffs. Suit filed by the plaintiffs was contested by the defendants and a written statement was filed taking preliminary objections regarding maintainability, concealment of material facts, being barred by provisions of Section 11 and Order 2 Rule 2 C.P.C. Relationship between the parties was however admitted. In the written statement a stand was taken that Mukandi Lal (predecessor in interest of plaintiffs no.2 to 8) had obtained a fraudulent decree dated 1.6.1998 against the defendants and on the basis of that decree, mutation no.4198 was sanctioned in favour of Mukandi Lal and Bachna Ram. Such judgement was challenged by the defendants and vide judgement and decree dated 16.1.2006 the earlier judgement and decree dated 1.6.1998 was set aside and mutation no.3967 was held valid. Categorical objection was taken that plaintiffs have not disclosed the previous litigation pertaining to the suit land. Material fact as regards mutation no.3967 having attained finality, was also concealed as the plaintiffs had not filed any appeal against the judgement dated 22.5.2009 passed in Civil Appeal No.8 of 2006 which was filed by the plaintiffs against the judgement dated 16.1.2006.

Upon pleadings of the parties the following issues were framed by the Trial Court:-

“1. Whether the plaintiffs are entitled to a decree for declaration that they are joint owners of the suit land as mentioned in para no.12(a) of the plaint?OPP (inadvertently typed as OPD)

2. Whether the plaintiffs are entitled to declaration to the effect that a mutation no.3967 is liable to be declared null and void?OPP

3. *Whether the plaintiffs are in fact, in actual, physical and cultivating possession of the suit land?OPP (inadvertently typed as OPD)*
4. *Whether the suit is not maintainable?OPD*
5. *Whether the plaintiffs has suppressed the true and material facts from the court?OPD*
6. *Whether the suit of the plaintiffs is hopelessly time barred?OPD*
7. *Relief.”*

The Trial Court dismissed the suit filed by the plaintiffs and even the Civil Appeal preferred by them has met the same fate in terms of passing of the impugned judgement dated 22.7.2014 by the first appellate court.

Mr. N.S. Chahal, learned counsel representing the appellants would argue that the findings of the courts below are perverse and based on misreading and misappreciation of evidence. It is contended that the suit filed by the appellants has been wrongly held to be barred under Order 2 Rule 2 C.P.C. It is urged that in the previous litigation between the parties the only question that arose was with regard to validity and legality of mutation no.4198 and there was no determination with regard to the shares of the legal heirs pertaining to suit property.

Counsel for the appellants has been heard at length and pleadings on record have been perused.

In the considered view of this Court the courts below upon due appreciation of evidence have recorded a concurrent finding that rights of the parties for the suit property already stood adjudicated upon in a previous round of litigation. In terms of Ex. D-1 Civil Suit No.1299 of 1996 titled as Mukandi Lal and Bachna Ram was filed on 8.10.1996 seeking declaration

to the effect that mutation no.3967 attested by the Assistant Collector IInd Grade, Kaithal on 27.6.1996 qua the suit land to the extent of half share in favour of defendants no.2 and 3 of that suit i.e. Usha Rani and Bachni Devi (defendants no.1 and 2 in the present lis) is illegal, null and void. Vide Ex. D-2/Ex.D-3 judgement and decree dated 1.6.1998 i.e. an ex-parte judgement was passed in the afore-noticed civil suit and mutation no.3697 was declared illegal. Plaintiffs Mukandi Lal and Bachna Ram were declared owners in possession to the extent of half share each in the suit property. In pursuance to the ex-parte judgement dated 1.6.1998, mutation no.4198 dated 19.12.1998 was sanctioned in favour of Mukandi Lal and Bachna Ram. Admittedly judgement dated 1.6.1998 was challenged by Usha Rani (defendant no.1 of the present case) by filing civil suit on 6.1.1999 titled as 'Usha Vs. Mukandi Lal and others' seeking declaration and joint possession to the effect that judgement and decree dated 1.6.1998 (Ex. D-2/Ex.D-3) is illegal, null and void. Vide judgement and decree dated 16.1.2006 i.e. Ex.D-6/Ex.D-7 passed in the suit instituted by Usha Rani (defendant no.1), judgement and decree dated 1.6.1998 (Ex.D-2/Ex.D-3) was declared illegal, null and void and not binding on the rights of Usha Rani (defendant no.1) and the earlier mutation no.3967 dated 28.6.1996 was declared valid and binding upon the parties. Accordingly, Usha Rani was declared co-sharer in joint possession to the extent of 1/4th share in the suit property. Present plaintiffs no.1 to 8 i.e. legal heirs of deceased Mukandi Lal and plaintiff no.9 (Bachna Ram) filed appeal no.8 of 2006 on 14.2.2006 and the same was dismissed vide judgement Ex.D-7 on 22.5.2009. The courts below have observed that as per contents of appeal Ex.D-8 the pleas that had been taken by the plaintiffs in the instant suit were also taken as grounds of appeal

against the judgement and decree dated 16.1.2006 (Ex.D-6/Ex.D-7). Vide judgement/decreed (Ex.D-9/Ex.D-10), the appeal was dismissed. The courts below have rightfully taken a view that the present suit filed by the plaintiffs was barred under Order 2 Rule 2 C.P.C and that the earlier judgements qua mutation no.3967 dated 28.8.1996 (Ex.D-11) would operate as *res judicata* and binding on the parties.

This Court is in agreement with the view taken by the courts below that the plaintiffs/appellants had not approached the court with clean hands inasmuch as the previous litigation filed between the parties had not been disclosed.

The impugned judgements have been passed upon cogent and valid reasoning and upon appreciation of evidence adduced on record. No basis for interference is warranted.

The instant appeal does not raise any question of law much less substantial question of law.

Appeal, accordingly, is dismissed.

Since the main appeal itself has been decided, pending applications, if any, shall stand disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

03.07.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No