

RSA No. 2918 of 2015 (O&M)
RSA No. 2801 of 2015 (O&M)

Amit Kumar
2018.06.27 11:37
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 2918 of 2015 (O&M)
Date of decision: 22.5.2018

Gurcharan Singh and others ... Appellants

Versus

Ajit Singh (since deceased) through LR.s. and others ... Respondents

RSA No. 2801 of 2015 (O&M)

Jaspal Kaur ... Appellants

Versus

Ajit Singh (since deceased) through LR.s. and others ... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. J.S. Brar, Advocate,
for the appellant (In RSA No. 2918 of 2015), and
for Mr. Nishan Singh Chahal, Advocate
for the appellant (in RSA No. 2801 of 2015).

ARUN PALLI, J. (Oral)

Vide this order and judgment, I shall decide two appeals, i.e. RSA Nos. 2918 and 2801 of 2015, for these arise out of the same suit and a common judgment. The suit filed by the plaintiff-respondent No.1 was decreed by the trial court, vide judgment and decree dated 3.4.2012. For the appeals preferred by the appellants-defendant Nos. 3 to 5 and defendant No.2 (Jaspal Kaur w/o Hardeep Singh) against the said decree failed, and were dismissed on 15.11.2014 by the appellate court, they are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

In brief, the plaintiff sought a declaration that he was the owner of half share in the land measuring 91K-7M, situated in village Khara, Tehsil and District Faridkot, and a decree dated 7.10.1988, rendered in Civil Suit No. 511

of 6.9.1988 (Jaspal Kaur wife of Ghuman Singh Vs. Hardeep Singh and another) was collusive, void and ineffective qua the rights of the plaintiff. The case set out by the plaintiff was that he and defendant No.1 (Hardeep Singh s/o Ghuman Singh) happened to be real brothers, and defendant No.2 (Jaspal Kaur) was wife of defendant No.1. The plaintiff migrated to America long ago, therefore, he appointed defendant No.1 as his general attorney to look after his land and other properties. However, defendant No.1, taking advantage of the absence of the plaintiff, transferred his share in the name of his wife (defendant No.2) through a civil court decree, dated 7.10.1988. The said decree was based on an alleged family settlement, whereas, no such settlement ever took place between the parties. Further, plaintiff never authorised defendant No.1 to suffer any decree qua his share in favour of anyone. And, he acquired knowledge of the said decree only when he obtained a certified copy of jamabandi from the Patwari. Thus, the suit.

In the written statement filed on behalf of defendant No.1, it was pleaded, *inter alia*, that in a family settlement, plaintiff gave the suit property to the wife of defendant No.1, and even asked him, being his general attorney, to carry out the necessary formalities, but still, he did not transfer the suit land in favour of defendant No.2. However, defendant No.2 with the consent of the plaintiff, filed a suit against defendant No.1 as also the plaintiff. Pursuant to the instructions of the plaintiff, defendant No.1 appeared in the said suit and eventually a decree dated 7.10.1988 was passed in favour of defendant No.2. Even otherwise, the suit was barred by time. Therefore, the said decree was binding upon the plaintiff, and, the suit was required to be dismissed.

Even in the written statement filed on behalf of defendant No.2, it was maintained that the plaintiff had given the suit land to defendant No.2,

pursuant to a family settlement, on the basis of which decree dated 7.10.1988 was passed in her favour. Further, in a subsequent suit filed by defendant No.1 on 30.3.1995 against defendant No.2, on the basis of another family settlement, vide judgment and decree dated 7.6.1995, defendant No.1 was declared to be the owner of the suit land.

Whereas, in the written statement filed on behalf of defendants No. 3 to 5, it was pleaded that they had no knowledge that their father (defendant No.1) was the general power of attorney holder of the plaintiff. Likewise, they were oblivious to the decree dated 7.10.1988 passed in favour of their mother. But, for defendant No.1 was recorded to be the absolute owner of the land measuring 57K-3M, comprised in khasra No. 1944(17-11), 1946(1-4), 1949(16-0), 1950(22-8), he transferred the said land in their favour, being his class-I heirs, vide registered *Tabdil Malkiat* No. 2014, dated 12.11.2007.

On a consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that nothing was brought on record to show the date, month or even the year, when the alleged family settlement was arrived at between the plaintiff and defendant No.2. Likewise, no evidence was led to show that post passing of the decree, dated 7.10.1988, there was another family settlement between defendants No.1 and 2, pursuant whereunto defendant No.2 suffered a decree dated 7.6.1995 in favour of her husband, i.e. defendant No.1. Further, the version as regards any family settlement between the plaintiff and defendant No.2 seemed incredible, as the plaintiff was married at the time of passing of the decree dated 7.10.1988, and had his own children. As conceded by none other than defendant No.1 in his cross-examination. It was rather strange that the plaintiff having his own children and family would enter into a family settlement and that too, with the

wife of his brother. No cogent explanation could be rendered by defendant No.2 in this regard. In reference to a decision of this Court in **Rajni Bajaj and others Vs. Ram Piari, 2006 (1) CCC 711**, it was observed that if the decree was passed on the basis of an alleged family settlement, in the absence of any evidence or proof that any such settlement was, indeed, arrived at, an adverse inference was to be drawn against the propounder of the decree, and also that no family settlement ever took place. Further, any such decree creating a right for the first time in the immovable property worth more than Rs.100 required compulsory registration. Not just that, if plaintiff and defendant No.1 had already transferred their respective shares in favour of defendant No.2, pursuant to a collusive decree dated 7.10.1988, there was hardly any occasion for defendant No.1 to file a subsequent suit against his wife (defendant No.2), for declaring himself as owner in possession of the property including the suit land. Significantly, in the suit filed by defendant No.1, the decree dated 7.10.1988, passed in favour of defendant No.2, was not assailed. In fact, by concealing the factum of an earlier decree dated 7.10.1988, both defendants No.1 and 2 succeeded in obtaining another collusive decree dated 7.6.1995. Still further, in terms of power of attorney dated 24.3.1979, executed by the plaintiff, defendant No.1 was never empowered to transfer the suit land by virtue of a consent decree. In reference to a decision of this Court in **Krishan Kumar Vs. Nand Lal and others, 2010 (3) CCC, 648**, it was concluded that power to sell or enter into a comprise vide deed of general power of attorney would not include the power to transfer the property by way of a consent decree. Undoubtedly, vide a general power of attorney, dated 24.3.1979, defendant No.1 was authorised to sell or alienate or even gift the suit land, but

no distinct power was conferred upon him to alienate the share of the plaintiff by suffering a consent decree. And that too in favour of his wife. Thus, the decree dated 7.10.1988, suffered by defendant No.1 in favour of defendant No.2, was illegal, null and void, and had no binding effect upon the rights of the plaintiff qua the suit land. No doubt, the evidence on record showed execution of transfer deed dated 12.11.2007, by defendant No.1 in favour of his sons (defendants No. 3 to 5), but that too was inconsequential, once the decree dated 7.10.1988 was held to be invalid or void. Rather, ex facie, the connivance and intent of the defendants, to somehow, usurp the plaintiff's share was writ large. The plea set out by defendants No.1 and 2 that plaintiff filed the suit nearly after 20 years of the passing of the decree dated 7.10.1988, therefore, the same was barred by time, was also held to be erroneous. It was concluded that no period of limitation was prescribed to institute a suit based on title, and the only way the defendants could deprive the plaintiff of any such declaration was to set up and substantiate the plea of adverse possession. Even as per the argument of the defendants, in terms of Articles 58 and 59 of the Limitation Act, 1963, the prescribed period for any such suit was three years from the date when the right to sue first accrued or facts entitling the plaintiff to assail/question the said decree came to his knowledge. Onus to prove that the suit filed by the plaintiff was time barred was upon the defendants. Nothing was brought on record to show, as to when and how did the plaintiff acquire knowledge of the decree dated 7.10.1988 for the first time. Concededly, he has been living and settled in America since long. Further, the suit property was still joint between the brothers to the extent of their respective shares, and defendant No.1, happened to be the duly constituted attorney of the plaintiff to look after his land, thus, in the absence of any tangible evidence, plaintiff could

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not be said to have any knowledge of the decree dated 7.10.1988 which was collusive between defendants No.1 and 2. On the contrary, the specific case set out by the plaintiff was that he acquired the knowledge of the decree dated 7.10.1988 on his visit to India in the year 2007, when Hardeep Singh (defendant No.1) transferred the suit property by way of transfer deed, dated 12.11.2007, in favour of his sons.

Learned counsel for the appellants merely reiterated the submissions that were advanced and duly dealt with by the courts below. On being pointedly asked, nothing could be referred to on record to show if the conclusions arrived at by both the courts were either contrary to the record or suffered from any material illegality.

No question of law, much less any substantial question of law, arises for consideration. The appeals being devoid of merit, are accordingly dismissed.

22.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned: YES
Whether Reportable : NO