

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

**RSA No.5205 of 2016 (O&M)
Date of Decision.14.05.2018**

Manga Singh and another

.....Appellants

Vs

Kewal Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.P. Kaushal, Advocate
for the appellants.

Mr. D.S. Sandhu, Advocate
for the caveator-respondents.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs are aggrieved of the concurrent finding of fact whereby the suit claiming declaration and permanent injunction challenging the sale deeds dated 20.05.1987 executed by grandfather of the plaintiffs, Gurbachan Singh in favour of defendant No.1 and 2 and Wills dated 16.5.1984 and 15.11.1988 in favour of defendant No.1 to 5 being illegal, null & void and inoperative, has been dismissed by the trial Court and upheld by the lower Appellate Court.

The appellants-plaintiffs instituted the suit on the premise that property, described in the head note of the plaint, was ancestral and coparcenary thus the plaintiffs were co-owners as coparcenars. Gurbachan Singh, grandfather of the plaintiffs being Karta sold the land comprised in khasrs No.1760(4-0) in favour of defendant No.1 and land comprised in khasra No.1070(4-0) in favour defendant No.2 vide sale deeds dated 20.05.1987 without any legal necessity. The aforementioned sale deeds were without consideration,

illegal, null and void and did not effect the proprietary and possessory rights of the plaintiffs. Gurbachan Singh had also executed the Wills aforementioned in favour of defendant No.1 to 5, which were also invalid, void, ineffective and liable to be set aside. It was stated that defendant No.1 and 2 further sold the property vide sale deeds dated 16.3.1999 to defendant No.14 and 15, which were also illegal and void.

The aforementioned suit was contested by the defendants by raising numerous preliminary objections that the plaintiffs had concealed material facts, did not approach the Court with clean hands, the suit was barred by doctrine akin to res judicata. It was further averred that the plaintiffs had contested the suit bearing No.434 dated 15.06.1993 titled as “Makhan Singh & Kewal Singh Vs. Joginder Singh, Manga Singh and Sukhwinder Singh” regarding khasra No.1070/1/4-0 and 1070/2/5-0 i.e. the property in dispute.

The aforementioned suit was decided vide judgment and decree dated 3.8.1994 wherein defendant No.1 and 2 were held to be the owners of the abovesaid khasra numbers. The share of Gurbachan Singh, in the property, was given to defendant No.4 and 5 as per the family settlement arrived at by Gurbachan Singh and the same was reduced in the form a Will dated 16.5.1984 and after the death of Gurbachan Singh, mutation was sought. After noting all these facts that defendant No.4 and 5 filed civil suit bearing No.388 dated 29.8.1989 titled as “Mohinder Singh, Joginder Singh son of Gurbachan Singh vs. Baldev Singh, Kewal Singh, Makhan Singh sons, Nasib Kaur widow, Surinder Kaur and Ranjit Kaur daughters of

Gurbachan Singh” for possession of the suit land, was later on withdrawn on having filed fresh suit. The said suit was dismissed vide order dated 8.2.1994. Thereafter, defendant No.5 Mohinder Singh and defendant No.4 Joginder Singh filed another suit for possession of 52 kanals of land on 31.1.1994 titled as “Mohinder Singh, Joginder Singh sons of Gurbachan Singh Vs. Baldev Singh, Kewal Singh and Makhan Singh sons of Gurbachan Singh” on the basis of the Will dated 15.11.1988. The said suit was dismissed by the Civil Judge (Senior Division), Phagwara vide judgment and decree dated 9.1.1998. All these factors were concealed by the plaintiffs.

The trial Court on the basis of the pleadings framed as many as twelve issues and on the preponderance of evidence found that the suit property at the hands of the appellants-plaintiffs was not ancestral.

Mr. A.P. Kaushal, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the finding of fact is totally erroneous and perverse, for, there is misreading of excerpt Ex.PX, which showed that Gurbachan Singh inherited the property from his forefathers and therefore, the land at the hands of the plaintiffs was ancestral. Since in all the proceedings, plaintiffs were not parties, therefore, the findings rendered in those proceedings would pale into insignificance and urged this Court for setting aside the judgments and decrees under challenge.

Mr. D.S. Sandhu, learned counsel appearing on behalf of the caveator-respondents submitted that the stand taken in the written

statement as noticed by the Courts below had been proved to the hilt by placing on record the judgments and decrees i.e. Ex.D3, D4, D5, D6 and D7, which have not been controverted as no contrary evidence has been adduced on record, therefore, there is no illegality and perversity.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Kaushal. Ex.PX shown to this Court during the course of hearing does not show that the property was inherited by Gurbachan Singh from his forefathers, for, there has to be three generations in lineage preceding to the plaintiffs for the purpose of claiming right by birth in the property. In the judgments and decrees aforementioned, there is a categorical finding whereby the sale deeds aforementioned were upheld. In my view, the filing of the suit by the appellants-plaintiffs, who were also contesting defendants in Civil Suit bearing No.434 decided on 3.8.1994, was a result of greed. The Courts below should have dismissed the suit with exemplary costs.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for consideration by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 14, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No