

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

**1. RSA No.6464 of 2016 (O&M)
Date of decision : July 18, 2018**

Atma Singh (deceased) through LR and another Appellants

Versus

Budh Singh and others Respondents

**2. RSA No.584 of 2017 (O&M)
Date of decision : July , 2018**

Harpreet Singh and others Appellants

Versus

Budh Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate for the appellants
in RSA No.6464 of 2016.

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Kulwant Singh, Advocate for the appellants
in RAS No.584 of 2017.

Mr. R.K. Singla and Mr. Tarun Singal, Advocates
for respondent No.1 in both cases.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

By this single judgment, I shall dispose of two connected
Regular Second Appeals bearing RSA No.6464 of 2016 and 584 of 2017
filed against the judgment and decree dated 07.10.2016 passed by learned

Addl. District Judge, Fatehabad, reversing the judgment and decree dated 29.05.2014 passed by learned Addl. Civil Judge (Sr. Divn.), Tohana, vide which the suit of the plaintiff-Budh Singh was dismissed. The learned Addl. District Judge, Fatehabad, decreed the suit filed by the plaintiff with costs after allowing the appeal.

Budh Singh-plaintiff had filed a suit for declaration to the effect that he is owner in possession of 1/3rd share of the land measuring 196 kanals 15 marlas comprised in khewat No.9, khatauni Nos.15 to 19 and 1/4th share of agricultural land measuring 96 kanals 4 marlas comprised in khewat No.9, khatauni Nos.20 to 23 total measuring 89 kanals 12 marlas, as per jamabandi for the year 1984-85, situated within the revenue estate of village Kullan, Tehsil Tohana, District Fatehabad.

Plaintiff sought further declaration to the effect that the judgment and decree dated 23.12.1988 passed in Civil Suit No.713, dated 20.12.1988 titled as *“Atma Singh vs Budh Singh”* as well as the subsequent revenue record on the basis of said decree are illegal, null and void as the said decree has been obtained by way of fraud and misrepresentation and are liable to be set aside.

Plaintiff sought further declaration to the effect that sale deed No.980, dated 03.06.1999 qua the land measuring 20 kanals 13 marlas comprised in khewat No.9, khatauni No.20 in favour of defendant Nos.3 to 5 (executed by defendant No.2 being the power of attorney of Atma Singh) and the mutation sanctioned on the basis of said sale deed are wrong, illegal, null and void, based on fraud and misrepresentation and not binding upon the rights of the plaintiff.

Plaintiff also sought setting aside the exchange deed Nos.2675, 17.09.2004 and 1282, dated 28.05.2004 and mutations sanctioned on the basis of the said exchange deeds. Plaintiff sought further declaration that sale deed No.52, dated 08.04.2009 executed by defendant No.6 in favour of defendant No.8 is also illegal, null and void and is liable to be set aside. Plaintiff also sought permanent injunction restraining the defendants from alienating, mortgaging, leasing and encumbering the suit land to any other person in any manner. Defendant Nos.1 and 2 are also sought to be restrained from getting *batai* from defendant Nos.6 and 7 regarding the suit land.

According to the plaintiff-Budh Singh, he along with his brothers Nasib Singh and Atma Singh was recorded as the owner as per his share in the suit land. Plaintiff is residing in England and his land was being cultivated by his brother Nasib Singh. The plaintiff never visited India from the year 1985 till 2008. It is alleged that defendant No.2, namely, Gurdeep Singh in connivance with his brother Atma Singh son of Roor Singh and Malkiat Singh son of Atma Singh got a Civil Suit No.713 of 20.12.1988 instituted before the Court of learned Sub Judge Second Class, Tohana on 20.12.1988, in which Mr. Radhe Shyam Thukral, Advocate appeared on the same day on behalf of Budh Singh and filed written statement admitting the claim. The said written statement was bearing the alleged thumb impressions of Budh Singh and he was identified by the counsel. Budh Singh was alleged to have suffered a statement, which was thumb marked by him admitting the claim and consequently the suit was decreed on 23.12.1988. This was done by Gurdeep Singh, defendant No.2, who had

filed the suit on behalf of Atma Singh, brother of the plaintiff. The said judgment and decree dated 23.12.1988 passed in Civil Suit No.713 of 20.12.1988, titled as “**Atma Singh vs Budh Singh**” is the result of fraud and impersonation and is liable to be set aside. On the basis of the said judgment and decree, said Atma Singh got his name incorporated in the revenue record. On the basis of said revenue entries, defendant Gurdeep Singh (since deceased) sold land measuring 20 kanals 13 marlas being power of attorney of Atma Singh in favour of defendant Nos.3 to 5. Defendant Nos.1 and 2 got the *batai* from defendant Nos.6 and 7 on the basis of said judgment and decree. Further, on the basis of wrong revenue record, exchange deed Nos.2675, dated 17.09.2004 and 1282 dated 28.05.2004 and sale deed dated 52, dated 08.04.2009 were executed by defendant No.6 in favour of defendant No.8. and the same are illegal. The plaintiff came to know the said forgery when he visited India in the year 2008. He initiated criminal proceedings against defendant Gurdeep Singh and lodged FIR.

Defendant No.1 did not appear and was proceeded against ex parte.

Defendant No.2 in his written statement contested the suit on the ground of maintainability and limitation. It was stated by him that the impugned judgment and decree has already held to be genuine vide issue No.3 in the suit titled as “**Nasib Singh vs Atma Singh**”, and the appeal preferred by Nasib Singh was also dismissed by the appellate Court. Plaintiff Budh Singh was also party to that litigation. It was stated that Nasib Singh was cultivating the suit land. Nasib Singh wanted to grab the property of Atma Singh and plaintiff-Budh Singh. Nasib Singh filed a suit

for declaration that he has become owner of the suit land by way of adverse possession. Then plaintiff Budh Singh, who was residing in England and Atma Singh, who was residing in Canada made a settlement regarding the suit land and defendant No.2 was instructed to file the suit for declaration against Budh Singh. Budh Singh himself appeared in the Court and filed written statement admitting the claim of the plaintiff. Consequently, the suit was rightly decreed and the subsequent alienation is also legal.

Defendant Nos.6 and 7 in their joint written statement admitted the claim of the plaintiff and prayed for decreeing of the suit.

Defendant Nos.3 to 5 in their joint written statement denied that the plaintiff never came to India from the year 1985 to 2008. They claimed that they purchased the suit land measuring 20 kanals 13 marlas vide sale deed dated 03.06.1999 after paying sale consideration to the vendor through his General Power of Attorney Gurdeep Singh, defendant No.2 and they are the bonafide purchasers. Now, they have exchanged some part of the land measuring 16 kanals with one Amarjeet Singh son of Nasib Singh and Ranjit Singh son of Amarjeet Singh vide exchange deed No.1282, dated 28.05.2004. They have also exchanged some part of their land with Amarjeet Singh son of Nasib Singh, vide exchange deed No.2675 dated 17.09.2009 and all these exchange deeds and sale deeds were within the knowledge of the plaintiff.

Defendant No.8 in his written statement claimed that he has purchased the land from defendant No.6.

From the pleadings, following issues were framed:

“1. Whether the plaintiff is owner in possession of the agricultural land as detailed in the head note of the

plaint, as alleged ? OPP

2. *Whether the judgment and decree dated 23.12.1988 passed in civil suit No. 713 dated 20.12.1988 titled as Atma Singh versus Budh Singh and mutation No. 929 sanctioned on the basis of above said decree are wrong, illegal, null and void, based on fraud, impersonation and not binding on the rights of the plaintiff and are liable to be set aside, as alleged ? OPP.*

3. *Whether sale deed bearing No 980 dated 3.6.1999 and mutation No. 1458 sanctioned on the basis of aforesaid sale deed are illegal, wrong, null and void, based on fraud, impersonation and not binding upon the rights of the plaintiffs as alleged? OPP.*

4. *Whether exchange deed No. 2675 dated 13.9.2004 (SK) and mutation No. 1738 sanctioned on the basis of said exchange deed are liable to be set aside qua the plaintiff and subsequent exchange deed No. 1282 and mutation No. 1737 sanctioned on the basis of said exchange deed is illegal, null and void and is also liable to be set aside, as alleged? OPP.*

5. *Whether the plaintiff is legally entitled to get correct the entries in the revenue record in his favour, as alleged? OPP.*

6. *Whether the defendants have no concern whatsoever with the ownership and possession of the suit land as alleged? OPP.*

7. *Whether the defendants are liable to be restrained from selling, mortgaging, leasing and encumbering the suit land to any other person in any manner, as alleged? OPP.*

8. *Whether the defendants No. 1 and 2 are liable to be restrained to get the batai from the defendants No. 6 and 7 regarding the suit land as alleged? OPP.*

9. *Whether suit of the plaintiff is false, frivolous and baseless and is liable to be dismissed? OPD.*
10. *Whether the suit of the plaintiff is highly time barred? OPD.*
11. *Whether the suit is not maintainable in the present form? OPD.*
12. *Whether the plaintiff has not come to the Court with clean hands and has concealed the true and material facts from this Hon'ble Court if so, its effect? OPD.*
13. *Whether the suit of the plaintiff is bad on account of mis-joinder of parties and non-joinder of necessary parties? OPD.*
14. *Whether the suit is bad for want of advalorem court fees? OPD.*
15. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.*
16. *Whether the plaintiff has no locus-standi and cause of action for filing the present suit? OPD.*
17. *Whether the Civil Court Tohana has got no jurisdiction to try and decide the present suit? OPD*
18. *Whether the suit of the plaintiff is barred by the principle of res judicata, as alleged ? OPD*
19. *Relief.”*

The trial Court took up issue Nos.1 to 8, 10 and 18 together and held that Budh Singh, plaintiff never appeared in witness box, only his power of attorney Karnail Singh appeared as PW1. It was also held that since passport was not proved, therefore, it is not proved that Budh Singh never came to India in the year 1988. It was also held that Budh Singh was party in Civil Suit No.238 and 118 and that findings on issue No.3 in the said suit are binding upon the plaintiff. Accordingly, defendant Nos.3 to 5

are held to be bonafide purchasers and said issues were decided in favour of the defendants.

Issue Nos.9 and 11 to 17 were not pressed and were returned against the defendants. Consequently, the suit was dismissed with costs. In the appeal, learned Addl. District Judge, Fatehabad, reversed the findings and decreed the suit.

I have heard learned counsel for the parties and have carefully gone through the written arguments submitted on behalf of Budh Singh as well as the case file.

It comes out from the evidence that Budh Singh, Atma Singh. Mehanga Singh and Nasib Singh were real brothers and they had also one sister Surinder Kaur. The date of birth of the plaintiff is 23.08.1935. The plaintiff is settled in England and his brother Atma Singh was settled in Surrey, British Columbia, Canada and died on August 07, 2005 before filing of the suit.

It also comes out that Malkiat Singh, defendant is son of Atma Singh and that Amarjeet Singh-defendant No.6 is son of Nasib Singh. Surinder Kaur-defendant No.7 is the widow of Nasib Singh. Both defendant Nos.6 and 7 have filed the written statement admitting the claim of the plaintiff.

It also comes out from the evidence that Surjit Kaur sister of Gurdeep Singh was married with Malkiat Singh prior to the year 1982. Malkiat Singh is the son of Atma Singh-defendant. Amarjeet Singh, defendant No.6 is son of Nasib Singh. Nirmal Singh is none else but son of maternal uncle of defendant No.2 Gurdeep Singh. Defendant No.2 Gurdeep

Singh was appointed as General Power of Attorney by Atma Singh on 10.01.1987. Now, after the death of Atma Singh, Malkiat Singh had appointed his brother-in-law Gurdeep Singh Gill as General Power of Attorney vide Ex. D-34. If the date of birth of the plaintiff as per his passport is taken i.e. 23.08.1935, he was only 53 years old in the year 1988 when the civil suit No.713 was filed on 20.12.1988.

First of all, this Court is to examine as to whether the judgment and decree dated 23.12.1988 passed in Civil Suit No.713, dated 20.12.1988 was correctly passed or is a result of fraud and impersonation?

The copy of plaint shows that Gurdeep Singh had filed a suit as General Power of Attorney of Atma Singh through Shri S.K. Jain, Advocate at Tohana on 20.12.1988. On the same day, without being summoned, Shri R.S. Thukral, Advocate appeared for Budh Singh and filed written statement admitting the claim of the plaintiff. On the same day, the statement of alleged Budh Singh was recorded, in which he stated that he admits the claim of the plaintiff. The statement was thumb marked by Budh Singh. The suit was decreed, vide judgment and decree dated 23.12.1988 by the then Sub Judge Second Class, Tohana. Though, in this case, Budh Singh did not appear in the witness box and produced power of attorney but there is sufficient evidence on the file to show that Budh Singh never came to India on the said date and never thumb marked the said statement. It is to be noted that on the complaint of Budh Singh, FIR No.64 (Ex.P16), dated 02.03.2011, under Sections 419, 420, 467 and 471 IPC was registered at Police Station City, Tohana, wherein the file of the said collusive civil suit was taken into possession. In the said criminal case, during investigation,

Budh Singh also furnished his specimen thumb impressions, which were taken before learned Sub Divisional Judicial Magistrate, Tohana and handed over to the police vide order dated 23.02.2011. The copy of the passport produced in the said criminal case is Ex.P-38, which shows that Budh Singh was a British citizen and his date of birth was recorded as 23.08.1935, whereas in the statement made before the learned Sub Judge Second Class, Tohana, his age was recorded as 65 years old, whereas he was 53 years old on the said date. The copy of the passport further shows that till the year 1988, Budh Singh never came to India as he got VISA later on.

Moreover, the evidence of Inderjit Singh, the document expert clearly shows that the thumb impression of Budh Singh on the said statement in the Court do not tally with specimen thumb impressions taken in the Court and other specimen thumb impressions. Similarly, the thumb impressions on the power of attorney in favour of Shri R.S. Thukral, Advocate also do not tally with his specimen thumb impressions. In fact, Budh Singh is a British citizen. He never signed even on the passport and other documents. He appended his signatures on all the documents including power of attorney in favour of Nirmal Singh. Therefore, it is apparent that Gurdeep Singh entered into a criminal conspiracy and filed a civil suit fully knowing that Budh Singh is not available in India. On the same day, a counsel was made to appear and file written statement and an imposter was also produced, who was aged about 65 years and who made the statement admitting the claim and thumb marked the statement. The learned Sub Judge Second Class, Tohana erred in not issuing the notice of the suit to the defendant and entertaining the written statement on the same

day without notice and rushing to record of the statement of defendant on the same day. The result was that on 23.12.1988, a decree was passed in favour of Atma Singh, brother of Budh Singh. The said decree is a result of fraud committed upon the Court. Since, Budh Singh never appeared in the said case and an imposter appeared, the said judgment is not binding upon Budh Singh and has to be ignored. The plea of limitation in such case will not stand in the way of such findings.

It appears from the documents produced on file that since Budh Singh was residing in England and used to come to India very rarely, his younger brother Nasib Singh was cultivating his land and became greedy and wanted to grab the land of his brother Budh Singh. Later on, Atma Singh having got the wind of the matter, also wanted to grab the land of his brother Budh Singh. Nasib Singh filed a civil suit No.238 on 18.09.1987, claiming that he has become owner of the suit land by way of adverse possession. The said suit was dismissed on 16.01.1995. The copy of the plaint in which Atma Singh and Budh Singh were made party, the address of Budh Singh was given of village Kullan, Tehsil Tohana, though he was permanently settled in England. The copy of Ex.P55 shows that even in the advertisement published in the Newspaper The Tribune Hindi, which was not widely circulated in England, a vague address of England was given by omitting to mention house number. In the said civil suit filed by Nasib Singh in the year 1987, a written statement was filed on behalf of Budh Singh much later on 31.05.1991 (Ex. D-16) by one Nirmal Singh, who happens to be son of maternal uncle of Gurdeep Singh, attorney of Atma Singh, wherein while contesting the suit, a plea was taken that during the

pendency of the suit, defendant No.2, namely Budh Singh has transferred the suit land in favour of defendant No.1. It also comes out that Nasib Singh instituted another suit No.118, dated 27.01.1989, in which he also claimed adverse possession. Both the suits were dismissed of vide judgment dated 16.01.1995 (Ex.D-18). The appeal against the said judgment was also dismissed. Therefore, it is apparent that Nasib Singh wanted to grab the land owned by his brother Atma Singh and Budh Singh. Before the civil decree in the year 1988, he filed a civil suit on 18.09.1987, claiming adverse possession. Apparently, Atma Singh also got wind of it and he through his General Attorney Gurdeep Singh, who happens to be brother of his daughter-in-law, decided to grab the land of Budh Singh and got the civil suit decreed in his favour by producing imposter and got the civil Court decree in his favour.

The authority of Hon'ble the Supreme Court of India delivered in case of "***Smt. Badami (Deceased) By her L.R. vs Bhali***", 2012 AIR (SC) 2858, regarding the family settlement produced by learned counsel for the appellants is not attracted in the present case as it is a case of fraud and impersonation.

Similarly, the authority of Hon'ble the Supreme Court of India, delivered in case of "***S.P. Chengalvaraya Naidu (Dead) by LRs. and others vs Jagannath (Dead) by LRs and others***", Vol CIX-(1995-1) ***The Punjab Law Reporter***, 293, is also not attracted in the present case as it is a case where impersonation was done and in fact, defendant never appeared in the Court.

As such, it has to be held that the judgment and decree dated

23.12.1988 passed in Civil Suit No.713, dated 20.12.1988, titled as “**Atma Singh vs Budh Singh**” is a result of fraud and impersonation and is liable to be set aside. The findings on issue No.2 are, accordingly, recorded. The result would be that the mutation on the basis of said decree and the entries in the revenue record on the basis of said judgment and decree are also liable to be set aside. The plaintiff is entitled to get the revenue entries corrected.

On behalf of the appellant, it has been argued that in the civil suit Nos.118 and 238, Budh Singh (defendant No.2 in the said suits) had filed written statement claiming that he had transferred the land in favour of defendant No.1. As discussed above, the suit was filed in the year 1987 and the written statement was filed much later on 31.05.1991, which was filed by Nirmal Singh. Nirmal Singh, Gurdeep Singh and Atma Singh are closely related. The plaintiff has claimed that though he had given power of attorney to Nasib Singh, but he cancelled the same before filing of the written statement. He produced the copy of revocation deed marked 'C', wherein he had revoked the power of attorney dated 14.11.1989 given by him to Nirmal Singh. Revocation deed was executed on 18.09.1990.

The photocopy of the power of attorney in favour of Nirmal Singh also shows that power of attorney was executed in England. Similarly, the revocation deed was also executed in England. Though, the said documents were not proved in accordance with law but the subsequent act of Budh Singh goes to show that he had cancelled the power of attorney of Nirmal Singh. In this regard, he also lodged FIR against Nirmal Singh, which is pending investigation. The cancellation report submitted by the

police was rejected by the Court and further investigation was ordered. Therefore, Nirmal Singh apparently knew that his power of attorney has been cancelled. Thus, despite the said fact, after waiting for nearly four years, he filed written statement raising such plea.

I am of the view that findings in civil suit Nos.238, dated 18.09.1987 and 118 of 27.01.1989 will not operate as res judicata against Budh Singh. The suit was filed by Nasib Singh against Atma Singh and Budh Singh. There is no *inter se* contest between Budh Singh and Atma Singh. The claim of the plaintiff Nasib Singh was rejected and his suit was dismissed. The appeal was also dismissed. Therefore, the admission in the said written statement will not operate as res judicata nor it will debar the the plaintiff from denying the said written statement, which is otherwise contradicted by the record as the judgment and decree dated 23.12.1988 has been found to be result of impersonation and forgery.

Contention of learned counsel of the appellants is that the present case is barred by the principle of res judicata. The reliance has been place upon the authority of Hon'ble the Supreme Court of India delivered in case of "***Nagabhushanammal (D) By LRs vs C. Chandikeswaralingama***", **2016(2) R.C.R. (Civil) 469**. The said authority is also distinguishable, as in this case, findings have been recorded that there was no contest between the co-defendants and that on behalf of Budh Singh, written statement was filed by Nirmal Singh, claiming to be his attorney, whereas Budh Singh had already cancelled his power of attorney before filing of the written statement. As discussed above, Nirmal Singh was close relation of Gurdeep Singh, who himself was close relation of defendant No.1 and Malkiat Singh

son of defendant No.1 and appears to have acted on behalf of defendant No.1 and Malkiat Singh.

Now, I will come to the fate of claim of defendant Nos.3 to 5 that they are bonafide purchasers. Defendant Nos.3 to 5 are residents of Canada. They did not appear in the witness box and rather their father Makhan Singh S/o Tara Singh, being the power of attorney appeared in the witness box. It is apparent from the photographs on sale deed No.980, dated 03.06.1999 that defendant Nos.3 to 5 were minors at that time and their father Makhan Singh appeared on their behalf as purchaser. In the statement, he had admitted that Malkiat Singh S/o Atma Singh is his class fellow, which means that defendant Nos.3 to 5 and their father Makhan Singh belong to same village Kullan, Tehsil Tohana. Makhan Singh claimed that before the sale deed, they had checked the revenue record and after satisfying themselves, they had purchased the land. There are several facts to show that defendant Nos.3 to 5 are not bonafide purchasers. They belong to same village and knew that Budh Singh never came to India in the year 1988. They purchased the land vide sale deed No.980, dated 03.06.1999. Further, they have executed exchange deed No.2675 dated 17.09.2004 (Ex.P28) of the land measuring 3 kanals 7 marlas and exchange deed dated 1282, dated 28.05.2004 (Ex.D3) regarding land measuring 16 kanals. In this way, total land measuring 19 kanals 7 marlas was exchanged and transferred to the legal heirs of Nasib Singh.

Makhan Singh would have known that Budh Singh never came to India in the year 1988. It appears that through the said exchange deeds, land has been transferred back in favour of legal heirs of Nasib Singh. It

also goes to show that defendant Nos.3 to 5 were in fact intermediary and they purchased the land only to transfer it back to the legal heirs of Nasib Singh through subsequent exchange deeds. The exchange deed No.2675, dated 17.09.2004 was executed when in the year 2008, the dispute regarding the ownership arose between Budh Singh and his brother Atma Singh. Therefore, it has to be held that defendant Nos.3 to 5 are not bonafide purchasers for consideration. Consequently, the sale deed No.980, dated 03.06.1999 for land measuring 23 kanals, 13 marlas and the exchange deed No.1282 and 2675 dated 28.05.2004 and 17.09.2004 for the land measuring 16 marlas and 3 kanals 7 marlas, respectively are also liable to be set aside.

As a result of foregoing discussion, the findings on issue Nos.1 to 8 and 10 to 18 stand decided in favour of plaintiff Budh Singh. Findings on issued No.9 also stand decided in favour of the plaintiff. After examining the evidence on merits, this Court does not find any illegality or infirmity or perversity in the judgment dated 07.10.2016 passed by the learned Addl. District Judge, Fatehabad. Consequently, I do not find any force in the present appeals. The same stand dismissed with costs.

Since, the main appeals have been dismissed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

July 18, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No