

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

1. RSA No.4757 of 2014 (O&M)
Date of decision : 12.03.2018

Satnam Singh and another

...Appellants

Versus

Surjit Singh and others

...Respondents

2. RSA No.4863 of 2014 (O&M)
Date of decision : 12.03.2018

Satnam Singh and another

...Appellants

Versus

Bachan Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Sarika Gupta, Advocate for the appellants.

Mr. Parvinder Singh, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM No.11174-C of 2014 in RSA No.4757 of 2014

For the reasons stated in the application, which is duly
supported by an affidavit, delay of 2 days in refiling the appeal is condoned.

Application is allowed.

Main Cases

By this common judgment, I shall be disposing of two appeals bearing RSA Nos.4757 and 4863 of 2014 arising from the same suit.

The plaintiffs-appellants are in the Regular Second Appeal against the finding of both the Courts below. The trial Court partly decreed the suit whereas learned First Appellate Court dismissed the suit filed by the plaintiffs in toto and setting aside a decree passed by the trial Court with regard to 2/3rd share of the property measuring 16 kanals 5 marlas.

The plaintiffs filed a suit claiming that they are owners of the half share of the property mentioned under headings A, B, C, and D. The plaintiffs also challenged the Civil Court decree dated 29.02.1992 suffered by Sewa Singh, their father in favour of Gurcharan Singh, Balwinder Singh and Surjit Singh, other sons.

Sewa Singh was predecessor-in-interest of the parties to the suit. Sewa Singh initially married with Bhago, mother of the plaintiffs. Two sons i.e. the plaintiffs were born. Bhago died in the year 1949. Sewa Singh thereafter remarried with Bachan Kaur and from cohabitation, Gurcharan Singh, Balwinder Singh and Surjit Singh and daughters were born. Sewa Singh was employed in the Railways and retired therefrom. On the basis of the family settlement, Gurcharan Singh, Balwinder Singh and Surjit Singh filed a suit for declaration that they are owners in possession of land measuring 20 kanals 9 marlas. Sewa Singh conceded to the claim made in the suit and ultimately a declaratory decree was passed by the Civil Court under Order 12 Rule 6 CPC on 29.02.1992.

The plaintiffs, as noted above, filed a suit on 11.06.2002

challenging the aforesaid judgment and decree passed by the Civil Court in Civil Suit No.690/91 titled as Balbir Singh Vs. Sewa Singh.

Learned trial Court decreed the suit only with respect to land measuring 16 kanals 5 marlas out of the property mentioned in heading 'A' on the ground that such property is proved to be ancestral property of the parties.

Two appeals were preferred, one filed by the plaintiffs claiming share in the remaining property and second by the defendants challenging the decree passed by the trial Court with respect to the land measuring 16 kanals 5 marlas.

Learned First Appellate Court has recorded following findings:-

1. That plaintiff No.2 is living separately since in the year 1960. Hence, there is no joint hindu family.
2. The plaintiffs have failed to connect the land pre-consolidation and post-consolidation and, therefore, the suit is liable to be dismissed.
3. Some part of the property had come from the sisters of Sewa Singh through gift deed.
4. The properties mentioned under heading B, C and D were self-acquired properties as they were purchased by Sewa Singh.
5. The suit filed by the plaintiffs is barred by limitation as the Civil Court decree dated 29.02.1992 has been challenged after more than a period of 10 years.

The plaintiffs-appellants have filed these two appeals alongwith application under Order 41 Rule 27 CPC.

Let us first deal with the application filed under Order 41 Rule 27 CPC.

The application has been filed to produce on file the copy of Misal Haquiat for the year 1914-15. The application filed cannot be allowed at this stage particularly when the plaintiffs filed the case claiming that the property is Joint Hindu Family Coparcenary Property. The plaintiffs were required to prove their case. The plaintiffs were in knowledge of the fact that they have to prove the property is Joint Hindu Family Ancestral Coparcenary Property. Once the plaintiffs failed to prove that, now at the stage of Regular Second Appeal, application for permission to lead additional evidence cannot be allowed.

Learned counsel for the appellants has vehemently argued that the Civil Court decree passed in the year 1992 cannot be used as an instrument of transfer. She submitted that the decree required registration and, therefore, Civil Court decree of 1992 is liable to be set aside. She further submitted that the plaintiffs did not come to know of the Civil Court decree as they were not party and hence, the suit filed by the plaintiffs was within limitation. She has further submitted that the properties mentioned under heading B, C and D were purchased from the Joint Hindu Family funds and, therefore, the properties would be Joint Hindu Family Properties.

With regard to the first argument, it may be noticed that the Civil Court decree acknowledging a previous oral family settlement arrived at between the parties is not an instrument of transfer. It is only a declaratory decree through which the parties acknowledge a previous oral family settlement. This Court has dealt with the issue in detail in the case of

2017(4) PLR 729, titled as Dhian Singh and others Vs. Mohinder Singh and others

As regards the argument of the learned counsel with regard to the limitation, it is suffice to note that on the one hand, it is the case of the plaintiffs that there is a Joint Hindu Family whereas on the other hand they assert that they never came to know of the Civil Court decree passed in the year 1992. Pursuant to the Civil Court decree, the property was transferred in favour of the plaintiffs. Such being the position, the plaintiffs cannot claim that they did not come to know of the Civil Court decree.

Last argument of the learned counsel is that the properties mentioned under heading B, C and D had been purchased from the income of the Joint Hindu Family Coparcenary Properties.

The First Appellate Court has noticed that Sewa Singh was employed in the Railways and there is no evidence that the properties mentioned under heading B, C and D were purchased from the income of the Joint Hindu Family Coparcenary Property. Defendant Nos.2 to 4 have relied upon the sale deeds dated 19.02.1997 and dated 15.10.1967. In absence of any evidence that the properties were purchased from the Joint Hindu Family funds, the finding of the First Appellate Court cannot be said to be erroneous.

In the last, learned counsel for the appellants has submitted that the Civil Court decree passed in the year 1992 was result of fraud which has to be pleaded and proved in accordance with law. In the present case, the plaintiffs have miserably failed to prove the fraud as alleged.

No other contentions were raised at the time of the arguments.

In view thereof, there is no scope for interference with the findings of fact arrived at by the First Appellate Court.

In view of the above, both the Regular Second Appeals are dismissed.

All the pending miscellaneous applications are disposed of, in terms of the abovesaid judgment.

12.03.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No