

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

RSA No.2368 of 2018(O&M)

Date of decision:11.7.2018

Neta

.....Appellant

VERSUS

Kamal Singh (since deceased) through LR's and others Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajesh Lamba, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by the appellant/plaintiff seeking declaration and possession qua land detailed in headnote of the plaint was dismissed by the trial Court vide judgment and decree dated 10.11.2015 passed by the Additional Civil Judge (Senior Division), Palwal that came to be affirmed in appeal by the Additional District Judge, Palwal. The facts relevant for disposal of present appeal are that the appellant and late Kare, adopted son of Shiv Lal, are owners in possession in equal share of agricultural land measuring 244 kanal 10 marla situated within the revenue estate of village Jaindapur, Tehsil and district Palwal. It is averred that land measuring 69 bigha 5 biswa, detailed in para 2 of the plaint was owned and possessed by Nihal Singh and Kare in equal shares. Nihal and Shiv Lal are sons of Govinda. They both did not have any son. Shiv Lal adopted Kare and Nihal Singh adopted Neta as his son. The suit property was the ancestral property. Plaintiff and Kare

being adopted grand-sons of Govinda are governed by customary law prevailing in District Palwal. As per custom, no one can alienate the ancestral property without legal necessity and lawful consideration. The suit land was consolidated by State Government. The land detailed in para 1 of the plaint was given in lieu of land described in para 2 of the plaint. During consolidation, Kare illegally and unlawfully, in collusion with consolidation authority, got recorded only 77 kanal 16 marlas land in the name of plaintiff whereas he was entitled to half share of suit property. Land measuring 166 kanal was recorded in the name of Kare. Further averred that in order to defeat right of the plaintiff, Kare illegally and unlawfully alienated suit property vide mutation No.393 dated 20.05.1974 on the basis of a decree passed by Sub Judge Ist Class, Palwal in civil suit No.275/1974 dated 31.01.1974. It is claimed that judgment and decree aforesaid are not binding on rights of the plaintiff as Kare had no right to alienate the suit land being ancestral in nature. Kare had no issue. Plaintiff is his only legal heir. Defendants No.1 to 3 have no right, title or interest in the suit property. The judgment and decree dated 31.01.1974 are illegal, null and void and liable to be set aside.

Defendants/respondents No.1 to 3 filed joint written statement and controverted the material allegations raised in the plaint with regard to entitlement of the appellant to seek any declaration and possession as a consequential relief. It is averred that appellant cannot challenge consolidation proceedings by virtue of Section 44 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (in short 'the Act'). It was denied that Nihal and Shiv Lal constituted joint Hindu family or Kare ever resided with the plaintiff. In a family

arrangement, Kare relinquished his right and interest in the suit land in favour of defendants.

The controversy between the parties led to framing of issues reproduced in para 6 and 7 of the judgment of trial Court.

Having heard counsel for the parties on the basis of materials on record, the trial Court rejected plea of the appellant that any challenge to allotment during consolidation is not amenable to be raised before the civil Court in view of the bar created under Section 44 of the Act. The Court also rejected claim of the appellant challenging the judgment and decree dated 31.01.1974 passed in Civil Suit No.275/1974 dated 31.01.1974.

Counsel for the appellant would argue that as the judgment and decree dated 31.01.1974 is based upon fraud practised upon Kare, such a decree is nothing but a nullity and can be challenged at any point of time without the provisions of Limitation Act, 1963 being attracted or suit being barred by way of limitation. It is argued that in the plaint of Civil Suit No.275/1974 respondents/defendants have raised contradictory pleas with regard to their being in adverse possession of the suit land and also a family settlement having been arrived at between the defendants (plaintiffs therein) and Kare (since deceased) defendant in the said suit. It is further argued that the suit was instituted on 31.01.1974, the written statement was also filed on the same day and the proceedings culminated in judgment and decree of even date i.e. 31.01.1974, sufficient to prove that the judgment and decree dated 31.01.1974 is the result of fraud. In addition, it is argued that judgment and decree dated 31.01.1974 cannot hold the field for want of registration and there could not be any family settlement between Kare

and defendants as defendants were not related to Kare after his shifting from the family of natural birth to that of family of adoptive parents. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Santosh Vs. Jagat Ram and another, 2010 (2) RCR (Civil) 206.**

I have heard counsel for the appellant, perused the paper-book particularly the judgments passed by the Courts.

Perusal of the averments reproduced precisely by the trial Court in judgment would make it evident that the appellant instituted the suit and expressed his grievance on two grounds. The first plea raised by the appellant is that he was entitled to more land than land measuring 77 kanal 16 marlas allotted in his favour during consolidation. As has been rightly held by the Courts any challenge to order passed by the Consolidation Authorities is not maintainable before the Civil Court in the given facts and circumstances, because of bar created under Section 44 of the Act. That being so, contention raised by the appellant with regard to short allotment during consolidation is not tenable and has rightly been rejected by the Courts.

This brings the Court to challenge against the judgment and decree dated 31.01.1974. Indisputably, Kare remained alive till 1985 but he never raised any grievance against judgment and decree dated 31.01.1974 or mutation No.393 dated 20.05.1974 sanctioned on the basis of judgment and decree dated 31.01.1974. Counsel for the appellant would fairly concede that the appellant could not adduce any evidence that the written statement filed in Civil Suit No.275/1974 does not bear endorsement of Kare. He has also failed to point out any materials on

record to substantiate his contention that the judgment and decree dated 31.01.1974 is the result of fraud practised upon Kare or the Court, therefore, contention raised by counsel for the appellant that there is no limitation to challenge such judgment and decree by relying upon judgment of Hon'ble the Supreme Court in **Santosh's case** (supra) is not meritorious and liable to be rejected. The mere fact that judgment and decree has been passed on the same day on which the suit was instituted itself cannot constitute a ground to hold that the judgment and decree are the result of fraud.

In **Santosh's case** (supra) the judgment and decree were held to be the result of fraud for the reason that Santosh was an issueless widow and she was deceived by brother and nephew of her late husband who obtained a consent decree with regard to land inherited by her. Santosh filed the suit to challenge the judgment and decree and substantiated her plea that same is the result of fraud. On the contrary, in the case at hand, Kare remained alive for a period of about 11 years after judgment and decree dated 31.01.1974 was passed but never challenged the same. The appellant has failed to adduce any evidence that the written statement purportedly filed by Kare does not bear his thumb impression. Under the circumstances, the appellant cannot derive any advantage to his contention from the referred authority. This apart, if Kare had the necessary knowledge of the judgment and decree and the appellant is claiming right through Kare, limitation would start from the date of knowledge of Kare and not that of the appellant. Analysed from any angle, challenge to the judgment and decree dated 31.01.1974 is clearly barred by limitation. As such, the appellant cannot derive any advantage to his contention from the

factum of non-registration of judgment and decree or the averments made in the plaint of Civil Suit No.275/1974.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

JULY 11, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no