

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

RSA No.290 of 2017 (O&M)

Date of Decision: February 02, 2018

Om Pati and others

...Appellants

Versus

Hari Singh (deceased) through LRs and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr. Ashok Kaushik, Advocate
for the appellants.

HARINDER SINGH SIDHU, J.

This regular second appeal has been filed against the judgment and decree of the courts below, whereby, the suit of the plaintiff- appellants has been dismissed.

The plaintiffs are the daughters of late Bhale Ram. Defendant No.1 Hari Singh (deceased) was the husband of defendant No.2 Santosh daughter of Late Bhale Ram. Defendant No.3 Budho is also daughter of Bhale Ram deceased.

The plaintiffs filed suit for declaration to the effect that they were owners in possession of 3/10 share of land measuring 11 kanal 16 marlas bearing Khasra No.287//1/1(3-16), 2(8-0) comprised in khewat No.547/513 Khatuni No.1023; land measuring 25 Kanal, 11 marla comprised in khasra no. 271//19/2(4-0), 21(7-4), 22(8-0), 287//3(6-7), comprised in khewat no. 630, khatuni No.1134, as per jamabandi for the year 1987-88, situated at village Narnaund, Tehsil Narnaund, District Hisar being the legal heirs of deceased Bhale Ram and the judgment and decree dated 20.12.1990 passed

in Civil Suit No.1059-C of 1990 titled Hari Singh vs. Bhale Ram was illegal and null and void.

It was the case of the plaintiffs that Bhale Ram was the owner in possession of ½ share of the suit land. He had five daughters i.e. the three plaintiffs, defendant no.2 and defendant no.3. It was claimed that after the death of Bhale Ram, the three plaintiffs, defendant no.2 and 3 have become owners in possession of the suit land in equal shares being his successors. Defendant no.2 had obtained the decree dated 20.12.1990 in the civil suit on the basis of fraud and misrepresentation. The decree was challenged on various grounds namely:

- (i) that the suit property in the hands of Bhale Ram was ancestral property of which he could not deprive the plaintiffs being his legal heirs,
- (ii) in the civil suit, it had been wrongly mentioned that a family settlement had been arrived at between Bhale Ram and defendant no.1 Hari Singh, who was his son-in-law, whereas, no such family settlement had been arrived at,
- (iii) it was misrepresented in the plaint that defendant no.2 was the only daughter of Bhale Ram,
- (iv) Bhale Ram had not received summons of the Court in regard to the civil suit and that a forged vakalatnama and written statement were filed on his behalf.

The defendants, on the other hand, claimed that defendant no.1 used to reside with his father-in-law Bhale Ram as Ghar Jawai and he performed all ceremonies on his behalf. The deceased Bhale Ram had

entered into a family settlement in the presence of all his daughters based on which the civil court decree was passed.

The Learned trial Court on appreciation of the evidence on record came to the conclusion that it had not been proved that the suit property was ancestral property in the hands of deceased-Bhale Ram. There was no evidence to show that the civil court decree was obtained by fraud. Even the witness of the plaintiffs PW-2 had admitted the factum of family settlement having been arrived at in the presence of Bhale Ram and all his daughters. It had been proved that since then defendant no.1 Hari Singh was in cultivating possession over the suit land. Mr. R.C. Sharma, Advocate stepped in the witness box as DW-5 stating that he had been engaged by Bhale Ram as his counsel in the civil suit; that the written statement was read over and explained to him and he thereafter appended his thumb impression. Further his statement in the civil suit was read over to him by the Court and after hearing and understanding the contents thereof he had appended his thumb impression. The decree was passed on 20.12.1990 whereas Bhale Ram was died on 7.7.1997. During the period of six and half years that he remained alive after the passing of the decree he did not challenge the same. Mutation based on the decree was sanctioned on 18.03.1991. The mutations were sanctioned publicly. It was accordingly, held that the civil court decree had been passed consequential to a family settlement entered into by Bhale Ram in the presence of all the daughters of Bhale Ram. Further the Civil Court decree had been suffered by the deceased Bhale Ram voluntarily of his own free will and the defendants had not been able to establish any fraud in regard thereto.

The Learned Trial Court did not believe the contention of the plaintiffs that they acquired knowledge of the decree only in September 2010. It held that it was highly improbable that except plaintiff no.1 every other relation of deceased Bhale Ram had knowledge of the passing of the decree. Mutation was sanctioned within one year of the passing of the decree. Subsequent jamabandis for the years 1992-93 Ex.D-1 and 2002-03 Ex.D-5 depicted defendant no.1 as owner in cultivating possession of the suit land. PW-2 Ram Phal had specifically deposed during cross examination that family settlement had taken place in the presence of all the daughters of Bhale Ram. Thus, as the suit to challenge the decree dated 20.12.1990 was filed in 2010 it was held to be barred by limitation.

The Learned lower Appellate Court affirmed the findings of learned trial Court.

Findings of facts have been recorded by the courts below after appreciating the evidence produced on record. Ld. Counsel for the appellant has not been able to show as to how the findings are perverse or not sustainable.

No substantial question of law arises for consideration in the present appeal.

Hence, this regular second appeal is dismissed.

February 02, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No