

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

**RSA No.3604 of 2017 (O&M)
Date of decision : April 24, 2018**

Avneet Singh

..... Appellant

Versus

Jaswant Singh (deceased) through LRs and another Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Gulzar Mohd., Advocate for the appellant.

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. (ORAL)

Impugned in the present regular second appeal is the judgment and decree dated 27.02.2017, passed by learned Addl. District Judge, Ludhian, reversing the judgment and decree dated 26.11.2013 passed by learned Civil Judge (Jr. Divn.), Khanna, whereby the suit of the plaintiff-appellant was decreed. The learned Addl. District Judge, Ludhiana allowed the appeal and dismissed the suit filed by the plaintiff-appellant.

The facts of the case are that the plaintiff-appellant, who was minor at the time of filing of the suit, filed a suit on 15.06.2004, in which he claimed declaration that he is co-owner in joint possession of the suit property measuring 43 kanals, 7 marlas. He also sought declaration that judgment and decree dated 16.01.1990 passed in Civil Suit No.780 of 28.11.1989, titled as “*Jaswant Singh vs Ajaib Singh*”, is the result of fraud,

misrepresentation and undue influence played upon Ajaib Singh by defendant No.1 and that Ajaib Singh was not competent to suffer the decree as it was ancestral joint Hindu family coparcenary property and there was no legal necessity and no family settlement to suffer the said decree.

It comes out that Ajaib Singh, grandfather of the plaintiff-appellant had two sons, namely Surinder Mohan Singh and Jaswant Singh. there is no mention about the daughters in the plaint. It is claimed in the plaint that the suit property was ancestral and coparcenary property in the hands of Ajaib Singh. Defendant No.1 Jaswant Singh is the uncle of plaintiff-appellant filed a suit No.780 of 28.11.1989 against Ajaib Singh claiming that the suit property is the joint Hindu family property. In the said case, Ajaib Singh is stated to have been appeared through his power of attorney and admitted the claim and suffered the collusive decree.

It is stated that Ajaib Singh was an old man and was not having good health and was suffering from mental and physical infirmities. Defendant No.1 taking the advantage of the old age and mental and physical infirmities of Ajaib Singh, played fraud upon him and obtained the impugned judgment and decree. The said decree was not registered.

The case of the defendants is that Paramjit Kaur, mother of the plaintiff-appellant has been filing different cases against the defendants on different grounds. The plaintiff is not in the possession or joint possession. It is denied that the suit property was inherited by Ajaib Singh from his father. Rather it was claimed that Jaswant Singh, defendant had purchased many properties from his income in the name of his father Ajaib Singh. There was a family settlement on the basis of which judgment and decree

dated 16.01.1990 was suffered. It was stated that Surinder Mohan Singh, father of the plaintiff-appellant knew everything. Therefore, he did not raise any objection during his life time. Moreover, Surinder Mohan Singh father of the plaintiff-appellant entered into an agreement dated 11.04.1991, which as reduced into writing on 18.04.1991, recognizing the properties of each other. It was witnessed by Charan Singh, Suraj Kant Dutt and Tarlochan Singh. It was also claimed that the suit is filed after 15 years of the passing of the decree and it is time barred. It is further claimed that Ajaib Singh executed a Will dated 24.05.1984, which was registered on 31.05.1984, whereby he had bequeathed his entire properties in favour of defendant No.1 and Surinder Mohan Singh in equal shares and a provision for maintenance for Surjit Kaur wife of Ajaib Singh, was also made. Later on, another Will dated 11.08.1987 was also execute. Due to change circumstances, another Will dated 01.08.1989 registered on 16.08.1989 revoking the previous Will and the entire remaining property was bequeathed in favour of defendant No.1 and Surinder Mohan Singh in equal shares. After the death of Ajaib Singh, his entire property was inherited by Jaswant Singh and Surinder Mohan Singh in equal shares on the basis of Will.

From the pleadings, following issues were framed:

- “1. Whether the suit land is joint Hindu Family coparcenery property and the plaintiff has a right by birth as alleged? OPP*
- 2. Whether the plaintiff is entitled to declaration as prayed for? OPP*
- 3. Whether the judgment and decree dated 16.01.1990 is illegal, null and void and is liable to be set aside? OPP*

4. *Whether the plaintiff is entitled to injunction as prayed for? OPP*
5. *Whether the suit is time barred? OPD*
6. *Whether the suit is not maintainable? OPD*
7. *Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD*
8. *Relief.”*

Learned trial Court held that the suit property was ancestral and co-parcener. The judgment and decrees were, accordingly, passed. In the appeal, learned Additional District Judge, Ludhiana took the view that the suit property is sought to be proved as ancestral property on the basis of pleadings in the collusive suit. It was held that there is no other document on file to show that suit property was ancestral in the hands of Ajaib Singh. The Court also relied upon the agreement dated 18.04.1991 executed between Surinder Mohan Singh and Jaswant Singh on which during evidence, the mother of plaintiff admitted the signatures of her husband. Accordingly, findings of the trial Court were set aside and the suit was dismissed.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

It comes out that the judgment and decree sought to be challenged is dated 16.01.1990. Defendants proved the agreement dated 18.04.1991 executed between Surinder Mohan Singh, father of the plaintiff and Jaswant Singh, in which both the parties recognized the properties of each other and there is also mention about the impugned collusive judgment and decree. In this way, Surinder Mohan Singh, father of the plaintiff at the most came to know about the said judgment and decree on 18.04.1991 when

the said agreement was executed. The plaintiff-appellant is claiming his right through his father. His father is stated to have died some time later. However, the limitation starts from 18.04.1991 when the father of the plaintiff came to know about the said judgment and decree. Therefore, the suit filed in the year 2004 is patently time barred. Further, except the pleadings made in the collusive suit, that the suit property is Hindu joint family property, no revenue record was produced to show that the property was ancestral in the hands of Ajaib Singh. The best evidence was the revenue record. The mere statements in the collusive suit cannot be made basis to hold that it is ancestral property. Further, the plaintiff-appellant claimed that a fraud was committed upon Ajaib Singh. Ajaib Singh during his life time did not challenge the said decree on the ground that a fraud was committed upon him.

It is contended on behalf of the plaintiff-appellant that Ajaib Singh died some time after the passing of the said judgment and decree. He was mentally ill. Even if, it is so, Surinder Mohan Singh, father of the plaintiff-appellant through whom the plaintiff-appellant claims his right never challenged the said judgment and decree during his life time. Surinder Mohan Singh is stated to have died on 19.09.1984 i.e. four years after the passing of the decree and three years after he entered into the agreement dated 18.04.1991 with his brother in which there was a mention about the said judgment and decree.

It being so, there is no illegality or infirmity in the judgment passed by learned Addl. District Judge, Ludhiana. There is no force in the present appeal.

As such, the present regular second appeal is dismissed. Since, the main appeal has been dismissed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

April 24, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No