

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

RSA No.943 of 2018

Date of Decision.21.05.2018

Krishan Kumar @ Krishan Lal

.....Appellant

Vs

Manju and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harpal Singh, Advocate for
Mr. Peeush Gagneja, Advocate
for the appellant.

-.-

AMIT RAWAL J.(ORAL)

C.M. No.2332-C of 2018

For the reasons stated in the application, delay of 50 days
in re-filing the appeal is condoned.

Application is allowed.

RSA No.943 of 2018

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit seeking declaration to the effect notwithstanding entries to the contrary in the revenue record, the plaintiffs are co-owners in possession of 2/3 share of the land measuring 114 kanals 14 marlas as described in head note (a) of the plaint and 26 kanals 5 marlas i.e. 1/3 share of the land measuring 78 kanals 16 marlas in the head note (b) by challenging the judgment and decree dated 20.03.1993 passed in civil suit bearing No.489-1 of 1992 and the mutation bearing No.2266, has been dismissed.

It was alleged that Beg Chand father of the plaintiffs and defendants No.2 to 6 constituted a Joint Hindu Family, was owner in possession of the land measuring 530 kanals 17 marlas as described in the head note of the plaint. He along with his sons were the coparceners

and cultivating the land in common with each other. After the demise of his wife, Beg Chand had been living with defendant No.2 Ved Parkash and defendant No.1, Manju wife of Ved Parkash. In order to compensate defendant Nos.1 and 2, Beg Chand made a family arrangement dated 9.8.1992 declaring that during his life time, his son Ved Parkash and daughter in law Manju shall be entitled to the income of his share in the land of joint family and shall look after him with it and thereafter his entire land shall be divided amongst his six sons. Beg Chand died on 18.1.1997. Defendant No.1 and 2 on taking undue advantage of simpleton Beg Chand managed to procure judgment and decree dated 15.12.1992 titled as "Manju Vs. Beg Chand" whereby part of land was agreed to be given to the daughter-in-law. In fact, defendant No.1 and 2 in collusion with each other played a fraud on Beg Chand and as well as the Court, for, it was incumbent upon Manju to implead the plaintiffs herein. It was averred that in the month of November, 2010, plaintiffs for the first time came across the writing *ibid* and the Will dated 6.10.1992. The plaintiffs approached and requested the defendants to admit the claim of the plaintiffs but the same was not acceded to. It is in this background, the suit aforementioned was filed.

Defendant No.3 and 4 did not appear despite service, therefore, proceeded ex parte whereas defendant No.1, 2, 5 and 6 contested the suit raising the preliminary objection with regard to maintainability, non joinder and misjoinder of necessary parties, estoppel and concealment. On merits, it was averred that the plaintiffs were having knowledge of the judgment and decree dated 20.03.1993 and as well as the mutation. Bhim Sain filed a partition application

dated 25.08.2000 in the court of Assistant Collector 1st Grade and other plaintiff also appeared in the aforementioned case and filed reply admitting the legality and validity of the decree dated 20.03.1993. Manju did not appear in the partition proceedings and was proceeded ex parte whereas Krishan Kumar, plaintiff No.3 and defendant No.2 Ved Parkash filed a joint written statement through their counsel. Mani Ram, plaintiff also filed reply in the partition proceedings admitting ownership of defendant No.1, for, the decree was pertaining to 114 kanals 14 marlas out of total land as stated above. On 27.1.2011, final partition was made by the then Tehsildar. Plaintiff No.1 to 3 had filed an appeal against that order in the Court of SDM, which was dismissed vide order dated 15.03.2012. During all this period, the plaintiffs did not raise the objection qua title of Manju nor set up a family arrangement dated 09.08.1992 or unregistered Will dated 6.10.1992, thus, prayer was made for dismissal of the suit.

Defendant No.5 and 6 filed separate joint written statement and stated that Beg Chand was owner of land measuring 530 kanals 17 marlas being owner of the property and given the land measuring 114 kanals 14 marlas in favour of Manju vide judgment and decree *ibid*.

Since the parties were at variance, the trial Court framed as many as seven issues. The appellants-plaintiffs examined as many as four witnesses whereas defendants examined two witnesses.

The trial Court on the basis of preponderance of evidence dismissed the suit which has been affirmed by the lower Appellate Court in appeal.

Mr. Harpal Singh, learned counsel appearing on behalf of the appellants submitted that judgments and decrees of the Courts below

are not sustainable in the eyes of law, for, a complete fraud and misrepresentation had been played upon Beg Chand as he did not know the intricacies of law and was made to appear in the court by filing written statement. The aforementioned fact was not in the knowledge of the plaintiffs, therefore, there was no limitation claiming title. Both the Courts below, thus, abdicated in non-suiting the plaintiffs on the ground of limitation. On the other hand, Beg Chand had executed the Will dated 6.10.1992 by equally distributing the property amongst the siblings by natural succession. Concededly Beg Chand after demise of his wife was living with defendant No.1 and 2 and both of them managed to get decree in favour of defendant No.1 i.e. daughter-in-law of Beg Chand. The Will had been proved through the testimony of witnesses PW3 Lachhman Ram and PW4 Madan Lal and Dalip Kumar. On acquiring the knowledge, the suit aforementioned was filed on 21.03.2011. The plaintiffs had right in the property measuring 114 kanals 14 marlas. As per Joint Hindu Family property, Beg Chand was incompetent to suffer the decree in the manner and mode as stated above, thus, urges this Court for setting aside the judgments and decrees under challenge.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Harpal Singh, for, concededly in the partition proceedings initiated by Bhim Sain, the other plaintiffs arrayed as respondents appeared and acknowledged the status of Manju, defendant No.1 as co-sharer, acquired on the basis decree dated 20.03.1993. No explanation has come forth in not laying challenge to the decree for all this period and having filed the suit in 2011. There is no dispute to the

proposition of law with regard to applicability of limitation claiming right on the basis of title but the legislation in its wisdom has carved out the provisions in the Limitation Act under Article 58 and 59, which read as under:-

58.	To obtain any other declaration.	Three years	When the right to sue first accrues.
59.	To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him.

On simple and plain reading of the aforementioned provisions, it is clear that a person, who did not have knowledge of the instrument or decree can assail the same within a period of three years from the date of acquiring knowledge. Partition proceedings were initiated before the filing of the suit where Manju was impleaded as defendant No.1 as co-owner. Accepting her to be co-owner testified that plaintiffs were in knowledge of the decree but no explanation has come forward in assailing the same as late as in the year 2011. Therefore, by applying the provision of Article 59 of the Limitation Act, the Courts below rightly dismissed the suit on the ground of limitation as well.

As far as the propounding of Will as well as writing is concerned, both the witnesses have spilled the beans in this regard as they could not withstand the wrath of cross-examination, for, PW3 Lachhman Ram stated that he was not present at the time of writing dated 09.08.1992. PW4 Madan Lal was none else but son in law of plaintiff Mani Ram. Dalip Kumar witness of Ex.P8 writing and Will

Ex.P9 is brother in law of planitff Ram Chander. Both persons were interested persons as closely related to the plaintiffs. They had not been consistent and coherent in their testimonies, which had been noticed in detail by the trial Court as well as the lower Appellate Court. In other words, plaintiffs miserably failed to discharge the onus with regard to aforementioned documents, rightly so, the writing and Will had been found to be surrounded by suspicious circumstances.

As an upshot of my finding, the concurrent finding of fact does not warrant interference, for, the arguments of Mr. Harpal Singh has not been able to bring the same within the realm of illegality and perversity, much less, no substantial question of law arises for determination. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 21, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No