

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

**RSA No.328 of 2019 (O&M)
Date of Decision:23.07.2019**

Vijay Singh and others

.....Appellants

Versus

Shiv Sahai (since deceased) through LR's and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

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

LISA GILL, J.

Appellants, who were arrayed as defendants no.1 to 4 before the learned trial Court, are aggrieved of judgement and decree dated 20.10.2015, passed by learned Additional Civil Judge (Sr. Division), Faridabad, as well as judgement and decree dated 27.08.2018, passed by the learned Additional District Judge, Faridabad.

Brief facts necessary for the adjudication of the case are that plaintiffs arrayed as respondents no.1 to 9 in the present appeal filed a suit for declaration to the effect that they are owners in possession of the suit property as per share of their vendors as detailed in the plaint and that the defendants have no right, title of interest in the same. Further declaration to the effect that judgement and decree dated 12.09.2001, was illegal, null, void and not binding on their rights, was sought. Permanent injunction restraining the defendants from taking illegal, forcible possession of the suit property

was sought, as well. It is pleaded that the agricultural land in question was earlier partitioned between co-sharers as per order dated 27.12.1982 passed by the learned Assistant Collector-Ist Grade, Ballabgarh, in the suit titled 'Smt. Biro Vs. Lakhi and others'. Mutation in this respect was sanctioned and possession of the respective land partitioned amongst the co-sharers, was taken. Prior to the partition, plaintiff no.8-Dharam Pal and plaintiff no.9-Smt. Om Wati widow of Harbans and one Raghuraj purchased land measuring 36 Kanals 19 Marlas from Bhikam Singh and Smt. Kishni, vide registered sale deed dated 31.05.1979. Mutation in this respect was sanctioned. However, out of the purchased land, 18 Kanals 9 Marlas fell for pre-emption and therefore the abovesaid three purchasers remained owners in possession of 18 Kanals 9 Marlas, only. Plaintiffs no.3 to 5, purchased land measuring 13 Kanals 10 Marlas from defendants no.1 and 5 vide registered sale deed no.7915 dated 23.08.1984. Specific killa numbers were purchased and possession thereof was delivered to them. Plaintiffs no.3 and 4 purchased land measuring 19 Kanals from defendants no.7 and 9 vide registered sale deed dated 23.12.1988. They also received possession of the specific killa numbers from their vendors as partition stood effected. In the meantime, order of partition dated 27.12.1982, was challenged by Kishan Pyari. The said order was set aside and declared null and void vide judgement and decree dated 18.07.1998. The purchasers, having purchased the land in question, became co-sharers in the suit property not having a right to any specific killa numbers. Mutation subsequent to the sale of the specific killa numbers was also set aside and fresh mutations sanctioned. It is pleaded that defendants no.5 to 9 and Bhikham Singh, however, suffered a

collusive decree qua land measuring 189 Kanals 10 Marlas in civil suit no. 65 of 23.02.2001 and mutation no. 4077 of 28.12.2001 was also sanctioned. Plaintiffs were never impleaded as party to the suit and the defendants have relied upon an incorrect Jamabandi which did not reflect the purchase of land by the co-sharers.

Suit was resisted by defendants no.1 to 4 i.e. the present appellants while stating that the names of the plaintiffs were introduced in the jamabandi as a result of nexus between the plaintiffs and the revenue officials. Possession of the plaintiffs over the suit property was denied. Judgement dated 12.09.2001, before the Permanent Lok Adalat was claimed to be final and binding.

Defendants no.5 and 6 pleaded to have become owners by way of adverse possession as cultivating possession was never handed over to the plaintiffs. Dismissal of the suit was prayed for.

Defendants no.7 to 9 and 16, in their written statement admitted the plaintiffs claim, while stating that they were not aware of any collusion and that defendants no.1 to 4 had obtained the decree by misrepresentation.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the judgement and decree dated 12.09.2001 and mutation no. 4037 are illegal, null and void and not binding on the plaintiff?OPP
2. Whether the plaintiff is entitled for the relief sought for? OPP
3. Whether the suit of the plaintiff is barred by limitation? OPD
4. Whether the plaintiff is estopped from filing the present suit?OPD
5. Whether the suit is bad for non-joinder and mis-joinder of parties?OPD
6. Whether the civil court has got no jurisdiction to try and

- entertain the present suit?OPD
7. Whether the suit of the plaintiff is not maintainable in the present for,?OPD
 8. Relief.

Both the parties led evidence in support of their respective claims/stands.

Initially, learned trial Court vide judgement dated 15.12.2011, decreed the plaintiffs suit by holding that the plaintiffs are owners in possession of the suit property as per the share of their vendors, excluding the half share, which was pre-empted. Judgement and decree dated 15.12.2011, was set aside.

An appeal was preferred by the defendants with a specific plea that the general power of attorney dated 23.08.1984 executed by defendant no.1-Vijay Singh on the basis of which the sale deeds were purportedly executed, was null and void, as at the time of its execution, he was a minor. The matter was remanded to the learned trial Court on 27.05.2015, with a direction to decide the suit afresh after first adjudicating the question regarding minority of appellant no.1-Vijay Singh.

Learned trial Court on considering the facts and circumstances as well as evidence on record, concluded that the said defendants failed to prove defendant-Vijay Singh to be a minor at the time of execution of the general power of attorney. The plea of fraud taken by the defendants in execution of the sale deeds, it is observed, could not be proved on the basis of the evidence on record. It is held that defendants no.7 to 9 and 16 had no right to suffer a decree in favour of defendants no.1 to 4 in 2001. The said decree was not suffered in a *bona fide* manner as the said defendants were aware of the sale deeds executed earlier in favour of the plaintiffs. Suit filed

by the plaintiff was decreed and the plaintiffs were declared owners in possession of the suit property as per the share of their vendors, excluding the half share which stood pre-empted. The impugned judgement and decree dated 12.09.2001, was set aside being illegal, null and void and not binding on the rights of the plaintiffs.

Appeal preferred by the present appellants was dismissed by the learned Additional District Judge, Faridabad, vide impugned judgement and decree dated 27.08.2018.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants submits that minority of appellant no.1 at the relevant time i.e., 13.06.1983, is duly proved by the evidence on record. Reference is made to the testimony of DW-5-Naresh Tomar and Ex.CX, the school leaving certificate of appellant no.1. It is further submitted that judgement and decree dated 23.09.2001, which was passed pursuant to a settlement before the Lok Adalat, could not have been challenged by way of a civil suit. It is thus prayed that the present appeal be allowed and the suit filed by the plaintiffs-respondents be dismissed throughout.

I have heard learned counsel for the appellants at length and have gone through the file with his assistance.

Reliance is sought to be placed by the appellants on the statement of DW-5-Naresh Tomar, to prove that appellant-Vijay was a minor at the time of execution of general power of attorney. DW-5, has been examined to prove a migration certificate relating to appellant no.1-Vijay Singh as Ex.DX. In the said certificate, date of birth of appellant no.1-Vijay

Singh, is mentioned as 01.05.1966. DW-5, admitted that he had not brought the record on the basis of which date of birth of appellant no.1-Vijay Singh, has been mentioned as 01.05.1966. The plaintiffs, on the other hand, have brought on record birth certificates of all the four sons of Brahmdev (Vijay Singh, is one of the sons of Brahmdev). Both the learned Courts below have rightly held that the evidence on record indicates that Virender and Vijay Singh, are one and the same persons. Doubtlessly, the defendants claim that Virender had died on 05.03.1964 and thereafter Vijay Singh was born. However, learned counsel for the appellant is unable to deny that neither the death certificate of Virender, nor the birth certificate of Vijay Singh was produced on record by the defendants, whereas it is a matter of record that all facts regarding the birth of the other children of Brahmdev have been duly incorporated in the record of the Birth and Death Registration, Authority. Learned Additional District Judge, Faridabad, in this respect, has observed as under:-

“12. On the other hand, the statement of DW-5 Naresh Tomar shows that he conceded that he had not brought the record on the basis of which the date of birth of Vijay singh was mentioned as 01-05-1966. Ex Dx is the transfer certificate which shows the date of birth of Vijay as 01- 05-1966. Ex DZ is the death certificate in the shape of a simple document issued by Sarpanch of concerned village which states that Virender s/o Brahm Dev was born on 21-01-1964 and had died on 05-03-1964. It was claimed by the defendants that Virender had died on 05-03-1964 and thereafter Vijay was born. But the defendants neither produced the death certificate of Virender, nor the birth certificate of Vijay. They got recorded the births of four sons but not of Vijay. Ex PX is the certificate of unavailabilty of any record of birth or death certificate of Vijay

Singh @ Virender Singh in the year of 1966. It shows that there is no record of birth of Vijay Singh pertaining to the year of 1966. This means that defendant no. 1 was not born in 1966. There is no death record of Virender Singh s/o Brahmdev and therefore it is not worth believing that he died in 1964 and that this Vijay is another son born in 1966. Above all Ex PY is the voter list of village Jawan, ward no. 4 and it shows that Vijender s/o Brahmdev is a voter at Sl. no. 126. If Vijender s/o Brahmdev had died in 1964 then how can his name find a place in the voter list of 2015? A perusal of impugned judgment shows that at the time of arguments it was pointed out to the ld lower court by the ld counsel for plaintiff that Vijay was present in the court and he was the same man whose photo was figuring in the voter list with the name of Virender. This argument was found to be having force, but during arguments in this court, said Vijay did not turn up for disputing the argument and finding given by ld lower court. He did not come present for claiming that he was not the one whose photo was present in the voter list with the name of Virender.

13. All these facts are proving without doubt that said Vijay is none other than Virender only, and therefore as per PW7/1, his date of birth is 21-01-1964. I also concur with the plea of ld lower court that the plea of minority taken by defendant no. 1 is barred by limitation as the impugned GPA is dated 23-08-1994 and the plea for the first time has been taken up by defendant no. 1 in 2015.”

Learned counsel for the appellants is further unable to deny that the question of minority of appellant no.1-Vijay Singh was raised for the first time in the year 2015 at the stage of appeal i.e., after a lapse of a period of 32 years of attaining majority by Vijay Singh. No plausible explanation has come-forth in this respect.

Another argument vehemently urged by learned counsel for the

appellants is that judgement and decree dated 12.09.2001, passed before Permanent & Continuous Lok Adalat, Faridabad, could not have been challenged by way of a civil suit. At best, it is a remedy of writ petition which may be available to the plaintiffs. I do not find any merit in this argument raised by learned counsel in the factual matrix of the instant case. Learned Additional District Judge, Faridabad, has correctly and succinctly dealt with this plea. The plaintiffs in the present case were not party to the proceedings before the Permanent Lok Adalat. The matter was never set up between the plaintiffs and the defendants, but between the defendants *inter se*. The plaintiffs have set-forth a case that the same is a collusive decree obtained in a fraudulent manner which is necessarily a matter of evidence.

Furthermore, it is a matter of record that the defendants were a party to the suit titled 'Kishan Pyari Vs. Biro', decided on 18.07.1998, by the learned Civil Judge (Jr. Division), Faridabad. They were thus aware of the sale deeds executed in favour of the plaintiffs, at that time, as well. Thus, setting aside of the partition proceedings, does not entitle the defendants to claim that the sale deeds in favour of the plaintiffs stood nullified. It is further rightly observed by the learned trial Court that it is the admitted case of defendants no.7 to 9 and 16 that they had sold the suit property to the plaintiffs, but they were not aware of the fact as to how much area in the khewat fell to their share. They being rustic and illiterate ladies, were misguided by defendants no.1 to 4, in whom they reposed full confidence into suffering a decree in their favour (defendants no.1 to 4). It is further their case that defendants no.1 to 4 had obtained the impugned decree by representing to them that even after the sale of the suit property to the

plaintiffs, some area was still standing in their names and they could transfer the same to defendants no.1 to 4. It is indeed rightly held that neither defendants no. 7 to 9 and 16 had any right to suffer a decree in favour of defendants no.1 to 4 in the year 2001 nor the decree was suffered in a *bona fide* manner. Execution of the sale deeds has not been challenged by the vendors and validity thereof has also not been questioned by the parties to the sale deed.

As discussed above, the defendants failed to prove minority of Vijay Singh, at the relevant time. Thus, both the learned Courts below have rendered a correct finding of fact on the basis of the evidence on record.

Learned counsel for the appellants, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below, after proper appreciation and consideration of the evidence on record have returned concurrent findings vide impugned judgements, which call for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 20.10.2015 and 27.08.2018 passed by the learned Additional Civil Judge (Sr. Division) Faridabad and learned Additional District Judge, Faridabad, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

23.07.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.