

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

RSA No.2543 of 2019(O&M)
Date of Decision: August 27, 2019

(1)

Meenu

...Appellant

Versus

Man Singh and another

...Respondents

(2)

RSA No.2555 of 2019 (O&M)

Harpal (since deceased) through his LR's and another

...Appellants

Versus

Man Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Amit Arora, Advocate
for the appellants in both the cases.

JAISHREE THAKUR, J. (Oral)

CM-6930-C-2019 in
RSA-2543-2019

1. For the reasons mentioned in the application, the same is
allowed and delay of 88 days in filing the appeal is condoned.

CM-6959-C-2019 &

CM-6962-C-2019 in
RSA-2555-2019

1. For the reasons mentioned in the applications, the same are allowed and delay of 08 days in filing the appeal and delay of 69 days re-filing the appeal are condoned.

RSA-2543-2019 &
RSA-2555-2019

1. This court proposes to dispose of above captioned two RSAs i.e. RSA No.2543 of 2019 titled as “Meenu vs. Man Singh and another” and RSA No.2555 of 2019 titled as “Harpal Singh (since deceased) through his LRs and another vs. Man Singh and others” by this common order, as facts and the law point involved in the same are common, pertaining to the same property.

2. In brief, the facts as culled out are that Meenu (appellant in RSA No.2543 of 2019) filed a civil suit for permanent injunction restraining the respondents-defendants Man Singh and his son Nar Singh from interfering in her peaceful possession claiming to be co-owner in exclusive possession of property situated in Khasra number 1248 (3-0) gair Mumkin plot comprised in Khewat No.305/252, Khatoni No.536 as shown in red colour by letters ABCD in the site plan. Similarly, Man Singh filed another suit against Meenu and her father namely Harpal Singh claiming to be in possession of land comprised in Khewat No.305, Khatauni No.536, Khasra No.1243, measuring 02 kanals 0 marla, 1247(1-10), 1248(3-0), 1842(0-2), 1843(0-2) kitte 5 total measuring 06 kanals 04 marlas situated in the revenue estate of village Devsar, Tehsil and District Bhiwani as per jamabandi for the years 2001-2002, while further averring that Harpal Singh

was only having 1/56 share in the aforesaid land and that judgment and decree dated 18.01.1984 passed in Civil Suit No.24 of 1984 titled as “Harpal Singh vs. Masuddi” was based on fraud and misrepresentation.

3. To understand the genesis of the dispute between the parties, Sh. Masuddi had six sons inclusive of Harpal Singh and Man Singh and one daughter Dharam Bai. In the year 1984, Civil Suit No.24 of 1984 titled as “Harpal Singh vs. Masuddi” was filed in which a consent decree had been obtained in favour of Harpal Singh and on the basis of that decree, mutation No.4069 was sanctioned in favour of Harpal Singh and subsequently thereafter, Harpal Singh executed a gift deed dated 23.04.2008 in favour of Meenu, his daughter. This civil suit and the gift deed were subsequently challenged by second son, Man Singh on the ground that the property in dispute was ancestral in nature and Masuddi, his father, could not have suffered a consent decree in favour of Harpal Singh. It was pleaded that he (Man Singh) was not made a party in the said civil suit and thus had no knowledge that his father had suffered a consent decree in favour of his brother, Harpal Singh. It is only when an attempt was made by Meenu to take forcible possession of the land in question that he came to know of the consent decree and the subsequent gift deed in favour of Meenu. It was submitted that Meenu had no right in the suit land as her father Harpal Singh was not owner to the extent of 1/8th share and the consent decree had been obtained on the basis of fraud, misrepresentation and undue influence played by Harpal Singh on his father Masuddi. In the civil suit filed by Meenu, daughter of Harpal Singh, she sought the relief of permanent injunction against Man Singh and another, restraining them from interfering

in her peaceful possession.

4. Written statements were filed and thereafter, issues were framed and evidence was led by both the parties.

5. In support of her plea, Meenu herself examined as PW6, apart from Rattan Singh, Clerk, V.R.K.D.C. Office, Bhiwani as PW1, Harpal as PW2, Sh. Sukh Pal Singh, Advocate as PW3, Sh. Kanwar Pal Singh, Draftsman as PW4, Amar Singh as PW5 and Sh. Rati Ram, Numberdar as PW7 and relied upon consent decree dated 18.01.1984 as well as gift deed in her favour to establish that she was in exclusive possession of the suit property. On the other hand, Man Singh got himself examined as DW1, apart from Amir Chand Taneja (Deed Writer) as DW2, Ram Chander as DW3, Krishan Singh as DW4 and Tej Pal Singh as DW5 and relied upon various jamabandis and mutations.

6. On appreciation of the evidence, the suit filed by appellant-Meenu against Man Singh and another was dismissed whereas, the suit filed by Man Singh against Harpal Singh and others was decreed, holding that the land in question was ancestral in nature and set aside the consent decree along with the gift deed executed by Harpal Singh in favour of Meenu. Aggrieved against the said judgment and decree of the trial court, two appeals were preferred by Meenu and others (i.e. one by Meenu alone and another by Harpal (since deceased) through his LRs along with Meenu), one being against the dismissal of her suit seeking permanent injunction and the second being against the judgment rendered in favour of Man Singh decreeing his suit. The first Appellate Court on appreciation of evidence upheld the judgment and decree of the lower court and dismissed both the

appeals filed by Meenu. Aggrieved, two regular second appeals have been preferred against the said judgments and decrees of the courts below.

7. Learned counsel appearing on behalf of the appellants would contend that the very suit that has been filed by Man Singh was beyond the period of limitation since the consent decree had been obtained by the appellant's father Harpal Singh as far back as 18.01.1984 and there was a gift deed that had been executed in favour of Meenu by her father on 23.04.2008. It is further contended that the suit had been filed after a period of 24 years, while further arguing that she is in exclusive possession of the suit property and, therefore, would be entitled to seek an injunction against the co-sharers restraining them from interfering in her peaceful possession.

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

9. The lower court, while dismissing the suit of the appellant Meenu and decreeing the suit of respondent No.1 Man Singh has observed that the suit property was ancestral one. It was further observed that Masuddi and six sons inclusive of Harpal Singh and Man Singh were owner to the extent of 1/56th share in the suit property. It was further observed that in the Civil Suit No.24 of 1984 filed by Harpal Singh (father of appellant Meenu) against his father, Harpal Singh did not make other brothers as defendants. Moreover, both PW6 Meenu and PW2 Harpal Singh admitted during their cross-examination that the suit property was ancestral property. The lower court further observed that the judgment and decree in Civil Suit No.24 of 1984 was obtained by suppressing the true facts regarding other brothers being coparceners in the suit property. The

lower court further observed that the judgment and decree dated 18.01.1984 passed in civil suit No.24 of 1984 is not legal as it was based upon fraud. Resultantly, mutation No.4069 sanctioned in favour of Harpal Singh is also wrong and illegal. Since Harpal Singh was not exclusive owner of the suit property, as such, the gift deed dated 23.04.2008 executed by Harpal Singh in favour of Meenu cannot be regarded as a legal gift or valid gift. The lower court further observed that the suit filed by Man Singh is within limitation, as he came to know about the judgment and decree dated 18.01.1984 when he received summons of the civil suit filed by Meenu and then subsequently challenged the judgment and decree dated 18.01.1984 as well as the gift deed 23.04.2008 along with mutations by filing a separate civil suit. The findings recorded by the lower court were affirmed in appeal by the first Appellate Court.

10. In the present case, admittedly Masuddi Singh (father of the parties) was having six sons inclusive of Harpal Singh and Man Singh and Masuddi Singh was having $1/8^{\text{th}}$ share in the suit property. The suit land is ancestral property, since the suit land was earlier owned by Gaggan Singh (predecessors-in-interest of the parties), who had four sons inclusive of Bakhtawar and thereby, Bakhtawar became owner of $1/4^{\text{th}}$ share in the suit property. Bakhtwar had two sons namely Masuddi and Banwari, as such, they became owner of $1/8^{\text{th}}$ share in the suit property. Since Masuddi i.e. father of Harpal Singh and Man Singh was having $1/8^{\text{th}}$ share in the suit property and the suit property being ancestral one, Masuddi had no right to suffer a consent decree of the whole of the $1/8^{\text{th}}$ share in favour of only one son namely Harpal Singh, when the other five sons of Masuddi, inclusive of

Man Singh, were having birth right in this ancestral property. Harpal Singh filed the Civil Suit No.24 of 1984 for declaration on the basis of compromise against his father Masuddi alone, without impleading the other brothers as a party, who were coparceners in the suit property, which suit was decreed on 18.01.1984 on the basis of admitted written statement filed by Masuddi. On the basis of said judgment and decree dated 18.01.1984, whole of the land was transferred in the name of Harpal Singh alone in the revenue record, which land was subsequently transferred by Harpal Singh in favour of his daughter, Meenu vide registered gift deed dated 23.04.2008. Thereafter, Meenu filed the civil suit for permanent injunction restraining the respondents and other legal heirs of Masuddi Singh claiming herself as absolute owner in possession over the suit land on the basis of judgment and decree dated 18.01.1984 as well as gift deed dated 23.04.2008. After receiving summons of the civil suit filed by Meenu, Man Singh (brother of father of Meenu) filed a separate civil suit for declaring the judgment and decree dated 18.01.1984 as well as gift deed 23.04.2008 as null and void, claiming that the suit land is still joint between the coparceners and all the sons of Masuddi are joint owner in the possession of the suit land. In the civil suit No.24 of 1984, it was averred by Harpal Singh that a dispute arose between the parties six months before filing of the suit, which was settled through a family settlement and in accordance with the same, he became owner in possession of the suit land to the extent of 1/8th share. Neither any family settlement regarding partition of the suit land had been produced on record nor had Harpal Singh impleaded his remaining brothers as defendants, who were coparceners in the suit property. All these factors

show that judgment and decree dated 18.01.1984 was obtained by Harpal Singh in collusion with his father, Masuddi by suppressing the true facts regarding other brothers, who were coparceners in the suit property.

11. So far as the argument raised by counsel for the appellants that the suit of Man Singh was hopelessly time barred and he cannot challenge the judgment and decree dated 18.01.1984 after a lapse of 24 years is concerned, Man Singh and others have categorically mentioned in their written statement that they came to know about the passing of the judgment and decree dated 18.01.1984 when they received the notices of the suit filed by Meenu against them. In this regard, law is settled that law of limitation could not arise until and unless infringement of right was noticed by one of the parties. Since Man Singh filed the civil suit immediately after coming to know about the consent decree dated 18.01.1984 after receiving the summons of the suit filed by Meenu in the year 2008, the same cannot be said to be barred by law of limitation. Moreover, there is no limitation to claim inheritance. Reliance in this regard can be placed upon judgment rendered by the Supreme Court in ***Daya Singh and another vs. Gurdev Singh and others, 2010(2) SCC 194*** and judgment rendered by Full Bench of this High Court in ***Mohinder Singh and another vs. Kashmira Singh, 1985 PLJ 82.***

12. This court is of the considered view that both the courts below have rightly decreed the suit of Man Singh and have rightly set aside the judgment and decree dated 18.01.1984 which was obtained by fraud and suppressing the true facts and consequently, the gift deed dated 23.04.2008 was also rightly set aside. Learned counsel for the appellants failed to point

out anything wrong in the findings recorded by the courts below.

13. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in these regular second appeals filed by the appellants, which have no merit.

14. Dismissed.

15. A copy of this judgment be placed on the connected file.

August 27, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No