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

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Date of decision : 21.05.2019

Balwant Singh (since deceased) through LRs and another

... Appellants

Versus

Santokh Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellants.

Mr. G.S. Gandhi, Advocate
for respondent No.1.

Mr. Ajay Jain, Advocate
for respondent Nos.6 to 10.

AMIT RAWAL, J.

The present regular second appeal, at the instance of appellants-defendants, is directed against concurrent findings of fact, whereby the suit of respondent No.1/plaintiff, for declaration to be owner to the extent of ½ share of land measuring 150 kanals 15 marlas, situated in Village Patlidabar, Tehsil and District Sirsa, by setting aside the judgments and decrees dated 29.05.1974 passed in Civil Suit No.403 of 1974, 28.08.1975 in Civil Suit No.363 of 1975 and 08.09.1978 in Civil Suit No.385 of 1977, has been decreed by trial Court and affirmed in appeal.

It was alleged that plaintiff and proforma defendant No.4 being minor through Balwant Singh/defendant No.2, filed a pre-emption suit regarding land in dispute, which was decreed in their favour to the extent of

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half share and proforma defendant No.4, deposited all decretal amount and obtained possession. Defendant No.2-Balwant Singh along with defendant Nos.1 and 3, i.e. Narain Singh and Gian Singh, being brother of Balwant Singh, filed a Civil Suit No.403 of 1974, titled as “Narain Singh etc. V/s Balwinder Singh etc., on the basis of some family settlement and obtained decree dated 29.05.1974. There was no family settlement and the decree was wrong because plaintiff-Santokh Singh, at the relevant point of time, was minor. Proforma defendant No.4-Balwinder Singh, again filed a Civil Suit No.363 of 1975, in Court at Sirsa, showing plaintiff as minor by challenging decree in Civil Suit No.403 of 1974. Proforma defendant No.4, compromised suit in Court against present plaintiff, being minor as no permission for compromise was taken and suit was, accordingly, dismissed. Third suit bearing No.385 of 1975, was filed titled as Balwinder Singh V/s Narain Singh, challenging the previous decree and the said suit was also compromised in the same manner, thus, all decrees, aforementioned, had no binding effect being passed in collusion with proforma defendant No.4 and Balwant Singh/defendant No.2, who was real maternal uncle. It was alleged that date of birth of plaintiff was 28.12.1961 and the suit was filed within a period of three years, after attaining the majority.

Defendant Nos.1 and 2 opposed suit and alleged that plaintiff and defendant No.4, never came in possession of suit land and decree in Civil Suit no.403 of 1974 was validly and correctly passed. In a subsequent suit No.363 of 1975, plaintiff-Santokh Singh along with his brother Balwinder Singh, compromised the matter and challenge to the decree in Civil Suit No.403 of 1974, was given up. In other words, the validity of the decree dated 29.05.1974, in Civil Suit No.403 of 1974, was accepted. In

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Civil Suit No.363 of 1975, where decree in Civil Suit No.403 of 1974, was challenged and Santokh Singh through Gurmit Singh, Advocate, submitted an application dated 28.08.1975, seeking permission of the Court, to permit him to prosecute the case himself being major. The Court below, after recording its statement, vide order dated 28.08.1975, allowed the application, therefore, did not lie in the mouth to challenge decree dated 29.05.1974 in Civil Suit No.363 of 1975, as, the matter with regard to majority of Santokh Singh, stood clinched.

Since parties were at variance, trial Court framed following issues:-

- 1. Whether the plaintiff is owner in possession of the suit land as alleged? OPP*
- 2. Whether the decree and judgment dated 29-5-1974 passed by R.C. Kathuria, Sub Judge, Sirsa, is illegal and liable to be set aside on the grounds as alleged in the plaint? OPD*
- 3. Whether the decree and the judgment dated 28-8-1975 passed by Sh. R.P. Bajaj, Sub Judge Sirsa is illegal and liable to be set aside on the grounds alleged in the plaint? OPP*
- 4. Whether the decree and judgment dated 8-9-1978 passed by Sh. V.S. Malik, Sub Judge, Sirsa, is illegal and it liable to be set aside on the grounds as alleged? OPP*
- 5. Whether the suit is within limitation? OPP*
- 6. Whether the suit is barred by limitation on account of preliminary objection No.2? OPD 1.*
- 7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD. 1, 2.*
- 8. Whether the plaintiff is estopped from filing the present suit? OPD. 1, 2.*
- 9. Whether the decree dated 8-9-1978 passed by Sh. V.S. Malik, Sub Judge Sirsa cannot be set aside as alleged? OPD*

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9-A Whether the dispute regarding the minority of Santokh Singh stands clinched down in Civil Suit No.363 of 1975 decided on 28-8-1975 by Sh. R.P. Bajaj, Sub Judge, Sirsa, as alleged? OPD 1.2

10. Whether the plaintiff has no locus standi to file the present suit? OPD. 1. 2

11. Whether the defendants are entitled to special costs? OPD.1

12. Relief.

Plaintiff in support of pleadings examined Jarnail Singh as PW-1, Chander Bhan as PW-2, Kartar Singh as PW-3, Veer Kumar Sukhija as PW-5, Natha Singh as PW-6, Jaichand Ram as PW7 and Megh Raj as PW-8 and himself as PW-4 and brought on record photostate copy of extract from the register of birth as Ex.P1, copy of the judgment dated 8-9-1978 passed in CS No.385 of 1977 as Ex.P2, copy of the written statement filed in that suit as Ex.P3, copy of plaint filed in the above said suit Ex.P4, copy of plaint in CS No.363 of 1975 as Ex.P5, copy of decree dated 28-8-1975 as Ex.P6, copy of the statement of Balwant Singh in CS No.68 of 1971 as Ex.P7, copy of the application dated 24-6-1971 as Ex.P8, copy of the judgment dated 14-3-69 as Ex.P9, copy of decree dated 14-3-1969 as Ex.P10, copy of order dated 18-10-1972 as Ex.P11, copy of mutation No.461 as Ex.P12, copy of decree dated 29-5-74 as Ex.P13 and copy of judgment dated 29-5-74 as Ex.P14. On the other hand, defendants examined Rasham Singh as DW-1, Baru Ram as DW-2, Sohal Lal as DW-3, Harnam Singh as dW-4, Jeet Singh as DW5, Yashpal Chand as DW-6, Balwant Singh as DW-7 and Gurmit Singh, Advocate as DW-8 and brought on record copy of school leaving certificate as Ex.D1& D2, copy of agreement dated 8-9-1978 as Ex.D3, copy of statement of Balwinder Singh & Santokh Singh as Ex.D4, copy of birth entry of Jangir Singh as Ex.D5,

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copy of voters list as Ex.D6, copy of mutation No.132 dated 11-10-55 as Ex.D7, copy of khasra girdawari as Ex.D8, jamabandi for the year 1961-62 and 1971-72 as Ex.D9 to Ex.D11, khasra girdawari for the year 1972-77 as Ex.D12, jamabandi for the year 1977-78 as Ex.D13, khasra girdawari for the year 1977-82 as Ex.D14, jamabandis for the year 1981-82 as Ex.D15 and girdawari 1982 to 85 as Ex.D16, copy of girdawari for 1982-1985 as Ex.D17 and copy of another girdawari for 1982-1985 as Ex.D18, copy of application dated 25-8-75 in case No.363/75 as Ex.D19, copy of statement of Santokh Singh dated 28-8-75 as Ex.D20, copy of statement of Santokh Singh dt. 28-8-75 in Civil suit no.363/5 as Ex.D21, copy of statement of Balwinder Singh as Ex.D22 in the above said suit, copy of compromise dated 28-8-75 as Ex.D23, copy of order dated 28-8-78 as Ex.D24, copy of order dated 28-8-75 as Ex.D25, copy of report of Yashpal Chand Jain as Ex.DW-6/1, admission from Balwinder Singh as Ex.D-2/1, admission from Santokh Singh as Ex.DW-2/2.

Trial Court, on the basis of entry in the register of birth (Ex.P1) proved through statement of PW1 and PW2, held that plaintiff was minor at the relevant point of time and decreed the suit. The appeal taken before the lower Appellate Court, was also dismissed.

Mr. Amit Jain, learned counsel appearing on behalf of the appellants-defendants, submitted that there is misreading of the oral and documentary evidence, as Kartar Singh, in his statement, deposed that Jasbir Singh, brother of the plaintiff, was younger by four years, than plaintiff and according to birth certificate of Jasbir Singh, his date of birth is 26.11.1960. It established the case of appellants that plaintiff was born in 1956 and not 1961. The evidence of Chowkidar of the Village, could not be implied, as

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to a specific question in the cross-examination, he admitted that no such entry of birth of the children was made, in the register and so was the statement of Kartar Singh. There was a duplicacy in the entry in the register of the birth and death. It has been proved on record that the date of birth of plaintiff was 10.04.1956. DW-2, Baru Ram, Headmaster, produced the school admission record proving on record date of birth of the plaintiff as 1956 and not 1961. Ex.D19, application dated 25.08.1975, reflected that Santokh Singh submitted an application to contest case, through an Advocate, having attained the age of majority. Suit was barred as per the provisions of Order 23 Rule 3-A of the Code of Civil Procedure as the previous suits were compromised and remedy lied else where. Expert of the plaintiff, did not produce on record any photograph of the impressions.

Mr. Ajay Jain, learned counsel appearing on behalf of respondents submitted that as per the contents of the written statement, defendants did not deny the averments qua date of birth of the plaintiff. There was no adjudication of majority in the previous suits. The documentary evidence of appellants-defendants, regarding school admission, was neither here nor there as consistent evidence of the plaintiff, was that Santokh Singh did not go to school. Plaintiff had become owner of suit property, vide judgment and decree (Ex.P9 & Ex.P10) as decrees dated 29.05.1974 passed in Civil Suit No.403 of 1974 and 28.08.1975 in Civil Suit No.363 of 1975, were rightly held to be null and void, for, no permission under Order 32 Rule 1 of the Code of Civil Procedure, was obtained. The suit was within limitation as plaintiff had attained the majority, on 28.12.1979 and the suit was filed, on 21.07.1980.

I have heard learned counsel for the parties, appraised the paper

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book as well as records of the Courts below and of the view that the following 'Substantial Questions of Law' arise for determination:-

- 1. Whether judgments and decrees of the Courts below, are result of misreading and mis-interpretation of documentary evidence as well as oral evidence.*
- 2. Whether respondents-plaintiffs have been able to discharge the onus, being minor on previous occasions, when suits were filed and the matter was compromised.*

Judgment and decree of the lower Appellate Court as well as the trial Court does not deal with any discussion of the evidence of the witnesses. It is a settled law that when a person asserts the right, the onus as per the provisions of Section 101 of the Indian Evidence Act, is required to be discharged. Jarnail Singh, PW-1, Gram Sewak, was examined by plaintiff, who stated that date of birth of the plaintiff, was 28.12.1961, as on receipt of the entry, in the register maintained by the Chowkidar, the same was ratified by him, but his cross-examination revealed many things. To a specific question in the cross-examination, he stated that he also had the children, but no entry of heirs was made in the register maintained by Chowkidar. He also feigned ignorance, whether any register with regard to the factum of death and birth, was being maintained, in the record of the Panchayat. He admitted that in this village, for the last 1-½ years, there was no *paidaish* and there were 30-40 houses in the village. He also admitted that in the register, at Sr. No.35, there was blank entry and after that, two pages were also blank and thereafter, the entry at Sr. No.32, by putting the date 07.10.1961, had been entered i.e. with regard to 77-GB-A. The register did not mention about names of the persons, who gave the information, as the column of the same, was vacant. The record reveals that none of the

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Presiding Officer, had even underlined and marked, the statement of the witnesses, which was, in red pencil marked by this Court, during the course of hearing of the appeal.

PW2-Chander Bhan, in his statement, stated that Chowkidar maintained register of birth and death. He knew Santokh Singh and his entry of birth was recorded in the register. When subjected to cross-examination, he admitted that whether, he had entered into record, the name of the children of Kartar Singh, father of Santokh Singh-plaintiff. He had also children aging 15-16 years, but the entry with regard to birth of children, had not been entered in the register. PW3-Kartar Singh, stated that he had four children including Santokh Singh and he did not remember, whether entry of children other than Santokh Singh, was recorded in the register or not. All this evidence, if had been read by the Courts below, it would have irresistibly been concluded that the plaintiff failed to discharge the onus i.e. whether he was minor, at the time when three suits were filed and compromised. Filing of three suits, as noticed above and decreetal of the same, in favour of plaintiff and defendant No.4-Balwinder Singh, is not in controversy. In all suits, an application was filed for challenging decree and the compromise. Expert of plaintiff, did not produce photographs of thumb-impressions of Santokh Singh, whereas the Expert of defendants i.e. Yashpal, submitted his report Ex.DW6/A and DW6-2/3 qua disputed thumb-impressions with specimen, with a naked eye, looked to be of a different person. It is strange that the trial Court and the lower Appellate Court, being the last Court of fact and law, did not examine any documentary evidence.

Keeping in view aforementioned facts and circumstances,

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judgments and decrees of the Courts below are not sustainable in the eyes of law and the same are hereby set aside. The suit of the plaintiff is dismissed. The Substantial Questions of Law, as framed above, are answered in favour of the appellants-defendants and against the respondents-plaintiffs. Resultantly, the second appeal is allowed.

21.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**