

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

RSA-2419-1996 (O&M)

Date of decision: 12.12.2019

Boota Singh (deceased) thr. LRs

...Appellant

Versus

Iqbal Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Rajeev Godara, Advocate for the appellant.

Mr. G.S. Sidhu, Advocate for the respondent.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Iqbal Singh had brought a suit against defendants Boota Singh, impleading Jinder Singh and Dalip Singh as proforma respondents, seeking a declaration that he is owner in possession of the land measuring 11K-7M situated in Village Maujukhera and that judgment and decree dated 23.02.1983 passed in civil suit titled as 'Boota Singh Vs. Jinder Singh' with regard to the suit land are wrong, illegal, null and void, being result of fraud, misrepresentation as well as concealment of facts and that mutation No.1517 sanctioned on 09.08.1986 on the basis of impugned decree is liable to be set aside and corrected and the plaintiff is entitled to possession of the land or

any part thereof.

As per version of the plaintiff, he is an illiterate person and had good relations with defendant No.1 Boota Singh. The plaintiff wanted to get his land demarcated and defendant No.1 offered to help him in that regard, in the process, obtained his thumb impressions on three blank and one printed paper, misusing those thumb impressions and he got the suit land decreed in his favour by getting the impugned decree passed fraudulently by making misrepresentation and concealment of the facts. The plaintiff sought setting aside of the decree on the following grounds:-

- a. Plaintiff had no knowledge of institution pendency and decision of the case.
- b. Plaintiff neither appeared in the Court nor engaged a counsel or filed written statement or made a statement in the Court admitting claim of contesting defendant No.1.
- c. That impugned decree and judgment were obtained fraudulently through misrepresentation and concealment of facts pleading that contesting defendant No.1 had become owner by way of adverse possession though revenue record revealed a contrary position.
- d. That defendant Boota Singh had never been in

possession of the suit land and, therefore, suit was not maintainable in the eye of law and that civil court passing the impugned judgment and decree had no jurisdiction to pass such a decree.

On refusal of the defendants to admit his claim, the plaintiff brought the suit in question.

On getting notice, defendant No.1 appeared and filed written statement, contesting the suit, raising various legal objections, contending that the suit was time barred; the particulars of fraud and misrepresentation had not been furnished and the suit deserved to be dismissed with special costs; the defendant No.1 has been in possession of the suit land, since the year 1969-70 as declared by impugned decree; that the decree dated 23.02.1983 was legal and valid; the present plaintiff was one of the defendants in Civil Suit No.704 of 1982 and he along with other two defendants had admitted claim of defendant No.1 in the said suit by filing written statement, engaging counsel and making statement in the Court. Mutation was rightly sanctioned on the basis of impugned judgment and decree. Refuting the remaining assertions, such defendant prayed for dismissal of the suit.

Defendant No.3 had filed a separate written statement, in which, he admitted the claim of the plaintiff.

Plaintiff filed replication, controverting the allegations in

the written statement filed by defendant No.1, reiterating the averments in the plaint.

On pleadings of the parties, the following issues were framed:-

1. Whether the impugned judgment and decree dated 23.02.1983, passed in civil suit titled as Boota Singh Vs. Jinder Singh and others are wrong, illegal, null and void and not binding on the rights of plaintiff? OPP.
2. Whether the present suit is time barred? OPD.
3. Whether the present suit is based on fraud and misrepresentation? OPD
4. Whether the defendants are entitled to special costs under Section 35-A CPC? OPD
5. Relief.

In support of his case, plaintiff himself appeared as PW1 besides examining Hakam Singh son of Kartar Singh as PW2.

In rebuttal, defendant No.1 examined Rajbir Singh A.V.R. from the office of Deputy Commissioner as DW1, Rajinder Singh @ Jinder as DW2, Nachhattar Singh, Advocate as DW3 and defendant No.1 himself appeared as DW4 besides examining, Anil Kumar, Document Expert as DW5.

After hearing arguments, the trial Court of Sub Judge, 1st Class, Sirsa, decided issue No.1 against the plaintiff, issue No.2 was decided in favour of the contesting defendant finding that suit was

time barred, issue No.3 was decided in favour of the contesting defendant observing that it was duly covered by issue No.1, issue No.4 was decided against the contesting defendant and vide judgment and decree dated 08.04.1992, suit of the plaintiff was dismissed with costs.

Feeling aggrieved, the plaintiff had brought an appeal before District Judge, Sirsa, which was assigned to Addl. District Judge, Sirsa, who vide judgment and decree dated 07.08.1996, accepted the appeal and set aside the judgment and decree passed by the trial Court and in the process, decreed the suit filed by the plaintiff.

Defendant No.1 feeling dissatisfied by the said judgment and decree passed by the Ist Appellate Court, has approached this Court, by way of filing the present Regular Second Appeal, notice of which was given to the respondent/plaintiff, who has put in appearance through counsel to offer a contest.

I have heard learned counsel for the parties besides going through the record.

The operative part of the judgment passed by learned Addl. District Judge, Sirsa is very important and is reproduced as under:-

“The judgment dated 23.02.1983 passed in Civil Suit No.704 of 1982 titled Boota Singh VS. Jinder Singh and others is not signed by the Presiding Officer although the decree sheet

*is typed and signed by the Presiding Officer. Similarly, the interim order vide which the file was taken up on 23.02.1983 for recording the statements of the defendants, is also not signed by the Presiding Officer. Actually, the case was fixed for 24.02.1983 for summoning of defendant No.2 but on the application file was taken up on 23.02.1983 and thereafter statement of defendant No.2 was recorded on the same day. However, neither order taking up the file nor the judgment dated 23.02.1983 are signed by the Presiding Officer. Order 20 Rule 3 CPC lays down that the judgment shall be dated and signed by the Judge in open Court, at the time of pronouncing it and, when consigned, shall not afterwards be altered or added to, save as provided by Section 152 or on review. In this manner as per the Order 20 Rule 3 of CPC, it is mandatory for the Judge to sign the judgment and put date in his own hand. Similarly, there is no signature of the Presiding Officer on the statement of defendants Jinder Singh and Iqbal Singh dated 21.02.1983, wherein Jinder Singh and Iqbal Singh are alleged to have admitted the claim of Boota Singh and I have seen the same in the original file. As per Order 18 Rule 8 of CPC the Judge is required to sign the memorandum of evidence or the statements of the parties. In **Soran Gir Vs. Manjit Singh & Ors. 1987 PLJ (Ph.) 409**, it was observed that the suit for declaration that the decree obtained by defendant fraudulent and inoperative and not binding on plaintiff's right and consequential relief of possession of land is governed by Article 65, for which the period of 12 years is prescribed. In the present case, it can be said that actually there is no judgment in the eyes of law, because the same is not signed by the Presiding Officer as required under Order 20 Rule 3 CPC. Similarly, the interim order vide which the file was taken up on an earlier date than fixed in the main suit, is not signed by the Presiding Officer and even the statement of defendants admitting the claim of the defendant Buta Singh in that suit is not signed by the Presiding Officer. Iqbal Singh defendant also*

did not sign the statement dated 21.02.1983. So, it can be said that the judgment and decree dated 23.02.1983 passed by the Sub Judge, Sirsa in Civil Suit No..704/82 titled 'Buta Singh Vs. Jinder Singh and others' are wrong, illegal, null and void, against laws and facts, inoperative and no binding on the right of the plaintiff/appellant. Similarly, the suit is within time because the statement dated 21.02.1983 is not signed by Iqbal Singh, although his name is written amongst the person who made statement. So it can be said that Iqbal Singh might have no knowledge regarding passing of the impugned decree. The trial Court wrongly observed while deciding issue No.2 that since Iqbal Singh signed the statement in the earlier suit, the suit is time barred. On the contrary, the record shows that the statement dated 21.02.1983 vide which the defendants admitted claim of Buta Singh, is not signed by the present plaintiff-appellant Iqbal Singh and, therefore, the suit is not time barred and he can file suit after acquiring the knowledge of the decree, which otherwise is based upon fraud and misrepresentation. It can be said that the previous judgment and decree dated 23.2.1983 are based upon fraud and misrepresentation and the judgment dated 23.02.1983 is not signed by the Presiding Officer. Even the order directing the Ahlmad to put up file is not signed. Iqbal Singh has also not signed the statement made in the Court. SO, certainly the earlier judgment and decree dated 23.02.1983 are based upon fraud and misrepresentation. The lower Court wrongly dismissed the suit of the plaintiff-appellant and did not properly appreciate the evidence. There is merit in the present appeal filed by the plaintiff/appellant Iqbal Singh and the same is hereby accepted and the impugned judgment and decree dated 08.04.1992 of the lower Court are set aside. Resultantly, the suit of the plaintiff Iqbal Singh is hereby decree as prayed for in the headnote of the plaint. The parties are left to bear their own costs. Decree sheet be prepared accordingly and file be consigned to records.”

Learned counsel for the appellant/defendant No.1 has contended that defendant himself had appeared in the Court and had submitted written statement, admitting the claim of the plaintiff and got his statement recorded. Thereafter, the Court had decreed the suit. That judgment is not signed by the Presiding Officer but the decree sheet has signatures of Presiding Officer. If for any reason, signatures at certain places are missing that does not render the impugned judgment and decree to be illegal, null and void. Whereas, learned counsel for the respondent/plaintiff controverted such assertions, stating that the Ist Appellate Court by detailed reasoning has come to the conclusion that the impugned decree was not legal and valid, and therefore, it could not be given any effect to and suit was rightly decreed by the Ist Appellate Court.

Learned counsel for the appellant had referred to various judgments, first being, **Bhaira Ram through LRs & Ors. Vs. Sajjna Devi & Ors. 2014 (56) RCR (Civil) 89** by a Single Judge of this Court, wherein it was observed that proceedings of the Court are presumed to be correct record, therefore, a very strong positive evidence is required to hold the decree obtained suffers from fraud.

The next judgment referred to by him was **Gurdev Kaur & Ors. Vs. Mehar Singh & Ors. 1989 PLJ 182** by a Division Bench of this Court, wherein it was observed that the compromise or consent decree, even if it creates title in respect of immovable

property of the value of Rs.100 or more, provided it is subject matter of the suit, even if the title created in favour of the decree holder for the first time under the decree, whether with consideration or without consideration and it does not require registration.

He had further referred to judgment **Rishi Raj & Ors. Vs. Rajender & Ors. 2016 (5) RCR (Civil) 1054** by a Single Judge of this Court, wherein it was observed that consent decree is as good as the decree based on contest unless the same is set aside by the competent Court of law.

On the other hand, learned counsel for the respondent had referred to Order 20 Rule 3 CPC, which provided that the judgment shall be dated and signed by the Judge in open Court, at the time of pronouncing it and, when consigned, shall not afterwards be altered or added to, save as provided by Section 152 or on review.

He had further referred to a judgment **Soran Gir Vs. Manjit Singh & Ors. 1987 RLR 547** by a Single Judge of this Court, wherein it was observed that it is not necessary for the plaintiff/respondent to have the decree set aside; he could maintain his relief for possession. It was further observed that the Court has inherent powers to vacate judgment entered by mistake and relieve the judgments procured by fraud and that these powers are not conferred by statute but necessary to orderly and efficient exercise of jurisdiction and further these powers cannot be fettered by taking recourse to law of limitation or any other technical plea.

I find that the judgment passed by learned Addl. District Judge, Sirsa is based upon proper appraisal of evidence and correct interpretation of law. The judgment of the trial Court which suffered from many illegalities and infirmities, resulting in drawing a wrong conclusion, was not sustainable and was rightly set aside by the Ist Appellate Court.

The judgment **Bhaira Ram (supra)** referred to by learned counsel for the appellant is not applicable to the present case, since the appellant/plaintiff is not related to respondent/defendant No.1 and there could not be question of any oral family settlement between them or plaintiff having pre-existing right in the suit land, being family member of Iqbal Singh or closely related to him. Furthermore, the decree in this case was also not got registered.

No substantial question of law arises in this case. I do not see any reason to upset the judgment passed by the Ist Appellate Court, rather, the appeal is found to be without merit and is dismissed accordingly.

12.12.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No