

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

**RSA No.1638 of 2019 (O&M)
Date of Decision:02.04.2019**

Gurbachan Kaur and others

.....Appellants

Versus

Paramjit Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.K.S.Cheema, Advocate
for the applicants-appellants.

LISA GILL, J.

Appellants-plaintiffs are aggrieved of judgment and decree dated 12.09.2017, passed by the learned Additional District Judge, Gurdaspur, whereby judgement and decree dated 17.12.2012 passed by the learned Civil Judge (Jr. Division), Batala, has been set aside consequently dismissing the suit filed by the appellants-plaintiffs.

Brief facts necessary for the adjudication of the case are that appellants-plaintiffs filed a suit for declaration to the effect that they are owners in possession, to the extent of half share, in the land as described in the plaint. Consequential relief of permanent injunction for restraining the defendants from alienating the property in question or interfering in the peaceful possession of the plaintiffs was also sought. It is pleaded that land measuring 68 Kanal 19 Marlas as detailed in the plaint was owned and possessed by Joginder Singh, Teju son of Mangal Singh to the extent of 1/3rd share each and Sawan Singh, Sucha Singh, Gurnam Singh, Surjit Singh

sons of Mulla Singh to the extent of 1/ 3rd share. It is pleaded that Teju was the real brother of Labh Singh and Mulla Singh. Joginder Singh is the son of Labh Singh. Teju died unmarried and issueless. After his death 1/ 3rd share of Teju was inherited by the legal heirs of Labh Singh and Mulla Singh. Plaintiffs, claiming to be legal heirs of Labh Singh, being the widow and children of Joginder Singh claimed that after the death of Teju, they were owners in possession of the property to the extent of 1/2 share on the basis of a will dated 21.01.1992. It is further mentioned in the plaint that Sawan Singh passed away and his estate was inherited by the parties arrayed as defendants no.1 to 6 before the learned trial Court. Sucha Singh died leaving behind defendants no.13 and 14 as his legal heirs. It is claimed that some days prior to the filing of the suit, defendants threatened to alienate the suit property in excess of their share. Plaintiffs obtained a copy of the jamabandi and at that stage they came to know that mutation regarding estate of Teju was wrongly entered in the name of Joginder Singh to the extent of 1/ 5th share. Defendants wrongly claimed that a will had been executed by Teju in their favour. Such a will, if any, was claimed to be illegal, forged and fabricated, having no binding effect on the rights of the plaintiffs. Mutation in question, it is stated was illegal, null and void, besides being a result of collusion of the defendants with the revenue authorities. Hence the suit was filed.

Suit was resisted by the defendants except defendant no.8, who was proceeded against *ex parte*. Various preliminary objections were taken in the written statement. Averments on merits were denied to the effect that the plaintiffs were entitled to the suit property as claimed. It is admitted that

Teju passed away on 20.12.1982, unmarried and issue-less. Alleged will dated 21.01.1992 executed by Joginder Singh in favour of the plaintiffs was stated to be fraudulent, illegal, null and void. It is stated that Teju during his lifetime and in sound disposing mind executed will dated 22.10.1982 in favour of Joginder Singh to the extent of 1/ 5th share and in favour of Sawan Singh, Sucha Singh, Gurnam Singh and Surjit Singh to the extent of the remaining 4/ 5th share. After death of Teju, mutation no. 906 was sanctioned by the revenue officials on 30.01.1984. Joginder Singh during his lifetime never challenged the said mutation. Original will, it is stated was in possession of Joginder Singh. The present suit, it is claimed has been filed with an ulterior motive merely to harass the defendants. Defendants were co-sharer/co-owner to the extent of 1/ 3rd share in their own right and 4/5 share out of 1/ 3rd share of the estate of Teju, whereas the plaintiffs were co-sharer/co-owner to the extent of 1/ 3rd share out of the estate of Joginder Singh and 1 /5th share out of the estate of Teju. It is denied that mutation in question was illegal, null or void. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether Joginder Singh executed will dated 21.01.1992? OPP.
2. Whether plaintiffs are entitled to the relief for declaration as prayed for?OPD
3. Whether the plaintiffs are entitled to relief for permanent injunction as prayed for?OPP
4. Whether the suit is bad for non-joinder of necessary party?OPD
- 5-A Whether Teju had executed a will dated 20.10.1982 in favour of Joginder Singh and etc.?OPD
- 5-B. Whether suit of the plaintiff is barred by time?OPD
6. Relief.

Both the parties led evidence in support of their respective

claims/stands.

Learned trial Court on considering the facts and circumstances as well as the evidence on record concluded that the plaintiffs had successfully proved their case. It is observed that the defendants had placed reliance on will dated 20.10.1982, but the said will was never produced on record. Mere reliance on the mutation Ex.D-8 is stated to be misplaced. Accordingly, suit filed by the plaintiffs was decreed.

Appeal preferred by the respondents-defendants was however allowed by the learned Additional District Judge, Gurdaspur, vide impugned judgement and decree dated 12.09.2017 while observing that the plaintiffs had concealed material facts, necessary parties were not impleaded and the suit was held to be barred by limitation. Appeal filed by the respondents-defendant was thus allowed and the suit filed by the appellants-plaintiffs was accordingly dismissed.

Aggrieved therefrom, present appeal has been filed by the appellants-plaintiffs.

Learned counsel for the appellants submits that the learned first appellate Court has grossly erred in setting aside a well reasoned and logical judgement and decree dated 17.12.2012, passed by the learned trial Court. An entirely new case which was not even pleaded has been set up for the respondents by the first appellate Court. It is further submitted that once suit of the plaintiffs is based on title, there is no question of limitation. Learned Additional District Judge, Gurdaspur, has wrongly observed that there is concealment of any material facts by the present appellants. There is no such concealment. Judgement and decree dated 12.09.2017 passed by the learned

trial Court has been wrongly set aside in a casual and whimsical manner. It is thus prayed that this appeal be allowed and the judgement and decree dated 12.09.2017 passed by the learned Additional District Judge, Gurdaspur, be set aside while upholding judgement and decree dated 17.12.2012, passed by the learned trial Court be upheld. Consequently, suit filed by the appellants-plaintiffs be decreed throughout.

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

There is no dispute that the suit property was originally owned and possessed by Labh Singh, (predecessor-in-interest of the present appellants-plaintiffs) Mulla Singh, (predecessor-in-interest of respondents-defendants and remaining defendants) and their brother Teju to the extent of 1/ 3rd share each. 1/ 3rd share of Labh Singh was inherited by his son Joginder Singh, who is the predecessor-in-interest of the present appellants-plaintiffs. Mulla Singh's 1/ 3rd share was inherited by his sons Surjit Singh etc. Teju, brother of Labh Singh and Mulla Singh admittedly died unmarried and issue-less. Plaintiffs claimed to have become owners in possession of half share of the entire suit property i.e., inclusive of the entire 1/ 3rd share of Teju. Defendants, on the other hand claimed that Teju had executed will dated 20.10.1982 bequeathing equal shares in favour of all his nephews. Mutation, Ex.P-4 was sanctioned on 23.02.1983. Joginder Singh son of Labh Singh is the predecessor-in-interest of the present appellants-plaintiffs. Plaintiffs have not disclosed the exact date of death of Joginder Singh. However, will dated 21.01.1992 set up by the plaintiffs is alleged to have been executed by Joginder Singh, thus it is safe to presume that even as per

the plaintiff's case, Joginder Singh died thereafter. It is apparent that Joginder Singh during his life time till the year 1992 never challenged the mutation qua property of Teju which was sanctioned nearly ten years prior to the said will. Plaintiffs clearly remained in possession of the property as per their share sanctioned vide the said mutation. PW-1-Lakhwinder Singh has admitted that they were cultivating the land left behind by Teju as per the shares mentioned in mutation. PW-1 has further admitted that he has two sisters, but they have not been impleaded as parties to the suit. It is rightly held by the learned Additional District Judge, Gurdaspur that the plaintiffs were in possession of the property as per mutation sanctioned in 1983 and it was wrongly claimed by the plaintiffs that they were in possession of half share of the suit property. Mutation sanctioned on 23.02.1983 was never challenged by Joginder Singh and the suit for declaration was filed by the plaintiffs on 04.08.2006. It is not in dispute that the parties were in possession of their respective shares as per the mutation sanctioned in 1983 on the basis of the will executed by Teju. Nieces of Teju, duly reflected in the mutation did not succeed to the property of Teju. This mutation was never challenged by Joginder Singh.

Learned counsel for the appellants is unable to deny that all the legal heirs of Teju, Labh Singh and Mulla Singh have not been disclosed and obviously not impleaded as parties in the suit. As per mutation, Ex.P-4, sanctioned after the death of Teju, it is apparent that Mulla Singh had three daughters apart from his son. Labh Singh is also reflected to have three daughters besides his son-Joginder Singh i.e., predecessor-in-interest of the present appellants-plaintiffs.

In the given facts and circumstances of the case, it is rightly held by the learned Additional District Judge, Gurdaspur that all the nieces of Teju as mentioned in mutation sheet, Ex.P-4 were necessary parties, but they were not impleaded.

In the factual matrix of the case, learned Additional District Judge, Gurdaspur, has rightly set aside the judgement and decree dated 17.12.2012 passed by the learned trial Court and dismissed the suit filed by the appellants-plaintiffs.

No other argument has been raised.

Learned counsel for the appellants-plaintiffs is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Impugned judgement and decree dated 12.09.2017, passed by the learned Additional District Judge, is a well reasoned judgement rendered after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, the impugned judgment and decree dated 12.09.2017 passed by the learned Additional District Judge, Gurdaspur, is upheld.

There is a delay of 408 days in re-filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in re-filing this appeal has been rendered academic. Application is accordingly disposed of.

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

02.04.2019

s.khan

Whether speaking/reasoned :
Whether reportable :

[LISA GILL]
Judge

Yes/No.
Yes/No.