

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

**RSA No.3719 of 2019 (O&M)
Date of decision: 16.09.2019**

Mohinder Singh and others

.....Appellants

Versus

Raj Pal and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Mohit, Advocate,
for Mr. Rajender Kumar, Advocate,
for the appellants.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 17.01.2013 passed by the Additional District Judge, Yamuna Nagar at Jagadhri, dismissing an appeal filed by plaintiffs-appellants (hereinafter referred to as 'the plaintiffs') against the judgment and decree dated 12.12.2009 passed by the Civil Judge (Junior Division), Yamuna Nagat at Jagadhri, whereby suit filed by them (plaintiffs) for declaration, has been decreed.

Mohinder Singh etc-plaintiffs (appellants herein) filed a suit for declaration with the averments that they were grandsons of Bishna Ram, who had expired on 02.06.2001. Said Bishna Ram had executed a registered Will in favour of the plaintiffs on 09.06.1992 and bequeathed all his moveable and immovable properties in their favour. Therefore, they had become owners in possession of the suit property in equal shares by way of aforesaid Will. It was further stated that Bishana Ram had also suffered a decree dated 20.03.1989 in Civil Suit No.21/CS of 1989, titled as

'Bhupinder vs. Bishna Ram', in favour of the plaintiffs. This decree was passed by the then Sub Judge, Jagadhri and by virtue of the decree, Bhupinder and Mohinder became owners of the suit property. The said decree was challenged by defendants Raj Pal, Raj Kumar and Mohan Lal along with Shanti Devi by impleading Bishna Ram, Rattan Singh, Bhupinder Singh and Mahinder Singh as defendant. However, in that suit, a compromise was effected and the property was reverted back to deceased Bishna. Accordingly, the suit was decreed to the effect that the defendants had become owners of the suit property in equal share. As per plaintiffs, the said judgment and decree dated 24.04.2001 was null and void. Hence, the suit.

Upon notice, defendant Nos. 1 to 4 (respondents) filed joint written statement whereby, all allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the plaintiff is estopped from filing the suit? OPD
5. Whether the plaintiff has affixed less Court fee as per the prevalent market value of the property? OPD
6. Relief.

Thereafter, vide order dated 21.11.2009, following additional issue was framed:-

- 1 (A). Whether plaintiffs are owner in possession of the suit

property by virtue of Will dated 09.06.1992 executed by Bishna Ram deceased? OPP

Trial Court, after hearing learned counsel for the parties, dismissed the suit. Appeal against the said judgment also met the same fate. Heard.

Ex.P6 and Ex.D4 is the compromise, on the basis of which, suit for declaration was decreed by the Court of Sh. A.K. Verma, Additional Civil Judge (Senior Division), Yamuna Nagat at Jagadhri. Para NO.1 of the compromise reads as under:-

“The parties to the suit have compromised the matter. Inter-se, through the intervention of respectables of the fact that the decree dated 20.03.1989 passed by the Court of Sh. Dharam Pal, HCS, then Sub Judge, Ist Class, in Civil Suit No.29 of 1989, titled as Bhupinder Vs. Bishna Ram is to be set aside and the property in dispute would revert back to Sh. Bishna Ram son of Sh. Kanhiya, father of plaintiffs No.1 to 4 and defendant No.2, which is to be divided by plaintiffs No.1 to 4 and defendant No.2 son of Bishna Ram in equal shares.”

The above said compromise, Ex.P6 and Ex.D4, was entered into between the parties during the pendency of civil suit titled as 'Rajpal vs. Bishna Ram'. In this suit, judgment and decree dated 20.03.1989, vide which, plaintiffs had become owners of the suit property, was challenged. Both the Courts have returned a finding that in this suit (filed by Rajpal), plaintiffs never raised an issue with regarding to execution of Will in their favour, which was executed in the year 1992. If, Bishna Ram had suffered a decree dated 20.03.1989 in favour of the plaintiffs, there was no occasion for him to execute a Will dated 09.06.1992. Secondly, even if, it is believed that the beneficiary was not in the knowledge of the Will till the time of the

death of testator i.e. 02.06.2001, then when the defendants (herein) challenged that decree passed in the year 1989 in favour of the plaintiffs and when Bishna Ram was made party to the suit, he (Bishna Ram) kept silent. The suit was instituted in the year 1996 and the matter was compromised in the year 2001 i.e. after a lapse of five years. But, still Bishna Ram did not object to the same. Further, a perusal of documents Ex.D2, Ex.D3 and Ex.D4 shows that the Will was disregarded by the revenue Courts as well. PW-4 (Numberdar) was not able to prove the execution of aforesaid Will. During his cross-examination, he stated that many cases were pending against him for deposing false in the Courts. Hence, deposition of Numberdar (PW-4) was not taken into consideration by the Courts below. While deciding issue No.2, the trial Court has observed that the judgment and decree passed on the basis of compromise, can only be reviewed or altered by the Court, which had passed the same and separate suit or appeal for setting aside the judgment and decree, based on the basis of compromise, will not lie. With these observations, suit filed by the plaintiffs was dismissed.

After hearing learned counsel for the appellants, most important aspect in the present case is that Bishna Ram had died on 02.06.2001 and before his death, he or the plaintiffs never objected to the compromise Ex.P6 and Ex.D4. Civil suit, in which compromise had taken place, was filed in the year 1996 and Bishna Ram never objected to the said suit till his death. Moreover, the Will dated 09.06.1992 was also discarded by the Revenue Courts as no mutation, on the basis of the said Will, has been sanctioned in favour of the plaintiffs. This fact is evident from the documents Ex.D2, Ex.D3 and Ex.D4, which are the orders passed by the

Revenue Authorities. In view of the above discussion, having examined the impugned judgments and documents relied upon by the parties, this Court is of the view that suit of the plaintiffs-appellants has been rightly dismissed. No illegality, much less perversity, has been found in the impugned judgments, which may warrant interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal. Moreover, the present appeal has been filed after a delay of 2280 days and no plausible explanation has been given for such a long delay.

Resultantly, application for condonation of delay as well as main appeal is dismissed.

16.09.2019
ajp

(RITU BAHRI)
JUDGE

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