

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

RSA-1538-2011(O&M)

Date of decision:-26.3.2019

Tarlochan Singh

...Appellant

Versus

Sukhjinder Singh and others

...Respondents

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

Present: Mr.Mohd.Yousaf, Advocate
for the appellant.

None for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Ajit Singh had brought a suit against defendants Sukhjinder Singh, Narinder Singh, Kapoor Kaur and Gurbachan Kaur seeking a declaration that judgment and decree passed in Civil Suit No.253/91 titled 'Sukhjinder Singh Versus Ujagar Singh' dated 10.4.1991 are null and void, not binding on rights of the plaintiff over the suit land measuring 2 kanals 17 marlas besides seeking relief of permanent injunction restraining the defendant No.1 from alienating the land in dispute and from interfering in peaceful possession of the plaintiff over the same.

As per version of the plaintiff, Ujagar Singh, who was father

of the plaintiff and defendants No.2 to 4, was owner of the suit land, which was ancestral, joint Hindu family and coparcenary property; that Ujagar Singh was the KARTA of the said family and he had expired leaving behind the plaintiff and defendant Nos.2 to 4 as his legal heirs; that the plaintiff and defendant No.2 were in cultivating possession of the disputed land according to their respective shares since last more than 25 years, however defendant No.1 in collusion with defendant No.2 in order to defraud the plaintiff filed a Civil Suit No.253/91 on 2.4.1991 titled 'Sukhjinder Singh versus Ujagar Singh' and procured a decree in his favour by concealing true facts and presenting a wrong person as Ujagar Singh before the Court; that defendant No.1 claims to have become owner of the suit land on the basis of impugned decree dated 10.4.1991. According to the plaintiff, Ujagar Singh had not appeared before the Court; he had not engaged any lawyer to appear as his Advocate and had not suffered any statement before the Court; that the thumb impressions purported to have been affixed by him on the documents are false and fictitious; even otherwise Ujagar Singh had no right to suffer a decree in favour of defendant No.1; that the decree has not been registered in the office of Sub-Registrar; that the plaintiff came to know about the decree in the first week of September 2002, when defendants No.1 and 2 tried to dispossess him from the suit land. Feeling aggrieved by such action of defendants No.1 and 2 and refusal of such defendants to treat the impugned decree as null and void, the plaintiff brought the suit in question.

Notice of the suit was given to the defendants. Only

defendants No.1 and 2 appeared to offer a contest. Whereas defendants No.3 and 4 did not appear and they were proceeded against ex parte.

In the joint written statement filed on behalf of defendants No.1 and 2, they have taken up preliminary objections that suit of the plaintiff was time barred since the decree dated 10.4.1991 had been challenged after a period of three years; that Ujagar Singh had not challenged the decree during his life time; that as a matter of fact, the plaintiff had no son of his own and had adopted a male child of his wife's sister; that the plaintiff had participated in the family settlement and consented to the same and thereafter the judgment and decree were suffered by Ujagar Singh; that the judgment and decree did not create title or interest in favour of defendant No.1, rather it recognized an earlier event of family settlement, which took place on 15.11.1990, therefore the decree did not require registration; that the suit was not properly valued for the purpose of Court fee and jurisdiction and it required to be valued at the market price of the disputed land which was Rs.60 lacs. On merits, the defendants contended that the suit land was not joint Hindu family coparcenary property qua the parties; that the parties are Jat Sikh by caste and are governed by agricultural custom of Punjab in matters of succession and alienation and the concept of joint Hindu family coparcenary is unknown to such community; that Ujagar Singh was not KARTA of joint Hindu family or coparcenary; that the whole of disputed land is in possession of defendant No.1 and the decree is valid and legal; that Ujagar Singh had himself appeared in the Court and made statement there; that the suit land was self acquired property of Ujagar Singh and he

had full authority to deal with the same; that the plaintiff was not in possession of any part of the suit land. In the end, the answering defendants prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether the plaintiff is entitled to the declaration sought? OPP.
2. Whether the plaintiff is entitled to the permanent injunction sought? OPP.
3. Whether the suit of the plaintiff is time barred? OPD.
4. Whether the plaintiff is estopped from filing the present suit? OPD.
5. Whether the suit is not properly valued? OPD.
6. Whether the judgment and decree only recognizes previous family settlement and does not require registration? OPD.
7. Relief.

In order to prove his case, the plaintiff had examined Jagjit Singh as PW1, Sh.Prem Singh Pathania as PW2 and Sh.Trilochan Singh as PW3.

On the other hand, the defendants had examined Sh.Ravinder Singh, Registry Clerk as DW1, Sh.Sher Singh, Deed Writer, Guhla as DW2, Sh.Sardool Singh, Advocate as DW3 and Sh.Gopal Krishna Sharma, Handwriting and Fingerprint Expert as DW4.

After hearing learned counsel for the parties, the trial Court

decided issues No.1 and 2 against the plaintiff, issue No.3 against the defendants, issue No.4 against the defendants, issue No.5 in favour of the defendants, issue No.6 against the defendants. Resultantly, suit of the plaintiff was dismissed. This was so done vide judgment and decree dated 3.4.2008.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Kaithal, who vide judgment and decree dated 1.10.2010 dismissed the same.

Being dissatisfied with the judgments and decrees passed by the Courts below, the legal heir of the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and suit of the plaintiff be decreed.

On getting notice of regular second appeal, initially the respondents/defendants No.1 and 2 had appeared before this Court through counsel but subsequently they failed to appear before this Court.

I have heard learned counsel for the appellant besides going through the record and I find that there is absolutely no merit in the appeal.

The courts below on appreciation of the evidence led by the parties have come to the conclusion that though from the sale deeds brought on record by the plaintiff Ex.P/4, Ex.P/6 and Ex.P/7, it comes out that Sh. Ujagar Singh had purchased the land vide sale deeds in the year 1958 but those sale deeds do not prove the ancestral nature of the land. Referring to cross-examination of PW Trilochan Singh, it has been

concluded that the plaintiff was enjoying his land separate from Ujagar Singh, which nullifies the contention that parties constituted a joint Hindu family or the suit land was joint Hindu family property and that further from the sale deeds Ex.DW1/A dated 20.9.2006 and Ex.DW1/B dated 9.4.2004 proved by DW1 Ravinder Kumar, it comes out that Tirlochan Singh is shown as son of Birsa Singh and there was no proof of his adoption by the plaintiff. Therefore, Tirlochan Singh could not testify on behalf of the plaintiff in respect of the matters regarding which only plaintiff had got personal knowledge. The trial Court referring to the testimony of Sh.Gopal Krishan Sharma, Handwriting and Fingerprints Expert, Patiala examined by the defendants, who had deposed that disputed thumb impressions Q2, Q3 and Q4 tallied with standard thumb impressions S1 to S3, whereas Q1 and Q5 were not fit for comparison and that he could not shaken in his cross examination. Therefore, it was proved on the record that the person, who had filed the written statement and suffered the statement before the Court in the civil suit in question was non-else but Ujagar Singh and contention of the plaintiff that defendants had produced some other person in place of Ujagar Singh stood falsified. Furthermore, the plaintiff had not produced any evidence in rebuttal and has failed to establish the allegations of fraud and misrepresentation. In that way, the decree was legal and valid, it was not challenged by Ujagar Singh during his life time.

As regards the requirement of decree for registration, it has been observed that as averred in the plaint Ex.DW3/A, a settlement was arrived at between the parties on 15.11.90 vide which Sukhjinder Singh

had become owner of the suit land. Therefore, the Court while decreeing the suit had merely put its seal on rights, which had been created by virtue of family settlement entered into between the parties on 15.11.1990 and no rights were being created for the first time by virtue of impugned settlement Ex.D5 and order Ex.D4, therefore, registration was not required. The law on the subject was discussed. The suit was found to be time barred.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below.

The appeal stands dismissed accordingly.

26.3.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No