

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

RSA-3541-2012(O&M)

Date of decision:-26.7.2019

Krishna Devi and others

...Appellants

Versus

Yashpaul and others

...Respondents

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

Argued by: Mr.Chetan Mittal, Senior Advocate with
Mr.Kunal Mulwani, Advocate
for the appellants.

H.S. MADAAN, J.

Briefly stated, facts of the case are that Smt.Krishana Devi – widow, Sh.Subhash Chander and Sh.Hans Raj – sons of Sh.Leela Krishan had brought a suit for declaration against defendants Sh.Yashpaul and Sh.Naresh Kumar, both sons of Sh.Leela Krishan impleading Sh.Bharat Sen, another son of Sh.Leela Krishan and Ms.Poonam, Ms.Rashmi, Ms.Kavita, Ms.Sushma – daughters of Sh.Leela Krishan as proforma defendants.

As per the case of the plaintiffs, their predecessor-in-interest Sh.Leela Krishan had died on 16.8.1998 leaving behind the plaintiffs and

defendants as his legal representatives; that Sh.Leela Krishan was absolute owner in possession of the suit land; that he was residing at New Delhi permanently and he used to visit village Dhudhiawali, Tehsil and District Sirsa quite often; that his sons Yashpaul and Naresh Kumar had procured the impugned judgment dated 27.9.1991 passed in Civil Suit No.722 of 1991 titled as “Yashpal & another Versus Leela Krishan” passed by the then Sub-Judge Ist Class, Sirsa regarding $\frac{1}{2}$ share of the suit land in their favour. According to the plaintiffs, the said judgment and decree are null and void being result of fraud, as such not binding upon their rights and are liable to be set aside; that the defendants had admitted in civil suit No.722 of 1991 that they constitute a joint Hindu family, thus the plaintiffs and proforma defendants were necessary parties in the said suit but they were not impleaded; that as a matter of fact no such family settlement had ever taken place between Sh.Leela Krishan and defendants No.1 and 2 and possession of land was also not delivered to them by Sh.Leela Krishan; that after death of Sh.Leela Krishan on 16.8.1998, the plaintiffs along with all the defendants have become joint owners in possession of the suit land to the extent of $\frac{1}{10}$ share each and defendants No.1 and 2 are not in possession of $\frac{1}{2}$ share in the suit land; that the defendants had not disclosed about the impugned judgment and decree during life time of Sh.Leela Krishan; the plaintiffs came to know about the impugned judgment and decree when they visited the Halqa Patwari for the purpose of getting mutation sanctioned with regard to inheritance of properties of Sh.Leela Krishan on the basis of natural succession; that the plaintiffs requested the defendants No.1 and 2 to admit their claim but

in vain, as such they filed the civil suit in question.

On notice, defendants No.1 and 2 had appeared through counsel and filed a joint written statement contesting the suit, however relationship between the parties inter se and with Sh.Leela Krishan was admitted and so was death of Sh.Leela Krishan on 16.8.1998 also admitted. According to these defendants, no joint Hindu family was ever constituted by the parties to the suit and no jointness was there with regard to the suit land; that as a matter of fact all the sons, daughters and wife of Sh.Leela Krishan had been watching and looking after their individual/personal interests; that the plaintiffs and proforma defendant No.3 were notorious, nefarious, head strong and forcible persons and were disobedient sons of Sh.Leela Krishan; that they used to maltreat, humiliate and beat up their father Sh.Leela Krishan causing a great loss and harm to reputation and properties of the family; that plaintiff No.1 Smt.Krishana Devi, who happened to be wife of Sh.Leela Krishan would refuse to prepare food and tea etc. for Sh.Leela Krishan; that under the circumstances Sh.Leela Krishan during his life time had ousted his sons Subhash Chander and Hans Raj, plaintiffs No.2 and 3, respectively, as well as Bharat Sen – proforma defendant No.3 from having any share in his properties; that a public notice in that regard was got published by Sh.Leela Krishan in the newspapers stating that he would not be responsible for any act, deed or liability of the plaintiffs No.2 and 3 and proforma defendant No.3; that the answering defendants used to serve Sh.Leela Krishan in all respects, who pleased with their services and suffered a Court decree dated 27.9.1991 in their favour; resultantly the

answering defendants became owners in possession of $\frac{1}{2}$ share in the suit land equally; that the impugned judgment and decree dated 27.9.1991 were passed on the basis of family settlement and the same are legal and valid; that Sh.Leela Krishan had gone to the Court and engaged Sh.Goverdhan Dass Goyal, Advocate, who drafted the written statement of admission under instructions of Sh.Leela Krishan, who had signed and verified the same; that statement of Sh.Leela Krishan was also recorded in the Court on 27.9.1991, in which he admitted the factum of family settlement; that the suit property was self-acquired property of Sh.Leela Krishan, as such he was very much competent to suffer a decree; that prior to the family settlement, the answering defendants were in possession of the suit land since they used to manage the affairs of such suit land under the supervision of their father; that the answering defendants are in actual and physical possession of the entire land measuring 233 kanals 9 marlas as its absolute owners; further Sh.Leela Krishan had executed a Will in his life time, which was got registered at Serial No.2743 in the office of Sub Registrar, Delhi on 22.5.1996 vide which he had bequeathed all his moveable and immovable properties in favour of the answering defendants in equal shares including remaining $\frac{1}{2}$ share of the suit land. Such defendants had taken up various legal objections, including, challenging the locus standi of the plaintiffs to bring the suit and also that the suit was hopelessly time barred. In the end, such defendants prayed for dismissal of the suit.

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

1. Whether the judgment and decree dated 27.9.1991 was fraudulent and bad and thus is liable to be set-aside? OPP.
2. Whether the defendants No.1 and 2 are owners in possession of the entire suit land by virtue of decree dated 27.9.1991 and Will dated 22.5.1996? OPD.
3. Whether the suit is within time? OPP.
4. Whether the suit is liable to be dismissed as plaintiffs concealed material facts? OPD.
5. Relief.

Both the parties were afforded adequate opportunities to lead their evidence.

After hearing learned counsel for the parties, the trial Court dismissed the suit of the plaintiffs with no order as to costs. This was so done vide judgment and decree dated 16.4.2009.

Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Sirsa, which was assigned to Additional District Judge(Fast Track Court), Sirsa, who vide judgment and decree dated 24.3.2012 dismissed the appeal,

Dissatisfied with the judgments and decrees passed by the Courts below, the plaintiffs have 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 the suit filed by them be decreed.

Notice of the appeal was issued to the respondents. Respondent No.3 had initially appeared through counsel but subsequently he absented, whereas remaining respondents did not appear despite service.

I have heard learned counsel for the appellants besides going through the records and I do not find any merit in the appeal.

A perusal of the judgments passed by the Courts below goes to show that such Courts had rejected the claim of the plaintiffs. The trial Court found that the suit land was self-acquired property of Sh.Leela Krishan, which was allotted to him and his two brothers; that the allotment was in the name of Sh.Leela Krishan and not his father. The contention of the plaintiffs in the civil suit that impugned judgment and decree were result of fraud was rejected observing that the contesting defendants had examined Sh.Goverdhan Dass, Advocate as DW3, who had represented Sh.Leela Krishan in the civil suit. He had stated that he had drafted the written statement admitting the claim of the plaintiffs on behalf of Sh. Leela Krishan and Sh.Leela Krishan had also made a statement in the Court, which was Exhibited as DW2/C. Both the documents bore signatures of Sh.Leela Krishan in Urdu. No fault or impersonation was proved to have been committed. The same being legal and valid documents, defendants No.1 and 2 had become owners of the suit land to the extent of ½ share whereas remaining ½ share in the suit land has been given to them by way of Will dated 22.5.1996, which has been challenged by the plaintiffs in Civil Court at New Delhi. The trial Court had observed that there is no controversy regarding the Will in the present case, which would be decided by the Civil Court at New Delhi; that the plaintiffs had not challenged the said registered Will regarding ½ share in the suit land, therefore, defendants were found to be owners in possession of the entire suit land on the basis of judgment and decree and

Will.

The appellants have challenged such findings stating that the suit property happened to be Hindu undivided family ancestral coparcenary property and not self acquired property as has been observed by the trial Court. However, even if this contention is taken to be correct that does not help the plaintiffs much since defendants No.1 and 2 being members of Hindu undivided family and as such coparceners are taken to have a pre-existing right in such land. Therefore, Sh.Leela Krishan could very well have entered into family settlement with them giving those defendants, who happened to be his sons $\frac{1}{2}$ share in the suit land by way of consent decree. The plaintiffs in that suit, who are defendants No.1 and 2 along with defendant in that suit i.e. their father Sh.Leela Krishan constituted a joint Hindu family under Hindu law. That fact was admitted by Sh.Leela Krishan in his written statement. It being so, the passing of decree was just recognition of pre-existing right of plaintiffs in that suit and no new rights were created, therefore, the decree did not require compulsory registration.

As far as objection raised by learned counsel for the appellants that other children of Sh.Leela Krishan and his wife have not been joined in the alleged family settlement or in the civil suit, again that does not have much effect in the family settlement. All the stake holders may not be joined and the same cannot be discarded simply for that reason. This is own case of the present plaintiffs that the suit land happened to be joint Hindu family ancestral coparcenary property, whereas the contesting defendants are denying that fact. Going by that

logic, no fault can be found with the impugned judgment and decree on account of non-registration. The contesting defendants have successfully proved that Sh.Leela Krishan had engaged a counsel and filed written statement admitting the claim of plaintiffs and had got his statement recorded in the trial Court to that effect; resultantly the suit of the plaintiffs therein was decreed. The present plaintiffs have been unable to prove that the impugned judgment and decree are result of fraud, impersonation etc. Sh.Leela Krishan during his life time had not challenged that decree. As such, heirs of the plaintiff have failed to prove on record any reason, which might have persuaded the Court for setting aside of impugned judgment and decree.

Another grouse of the appellants is that the suit filed by them was held to be time barred, although the plaintiffs were not aware of the passing of impugned judgment and decree. Since no mutation on the basis of that judgment and decree had been got sanctioned by defendants No.1 and 2 from the revenue officials and they came to know about it only after death of Sh.Leela Krishan. Therefore, suit filed by them is within limitation, if limitation is calculated from the date of attaining knowledge.

Learned counsel for the appellants has referred to judgment by Co-ordinate Bench in that regard i.e. **Bakshish Singh and another Versus Harbans Singh (Died) through LRs, 2009(5) RCR(Civil) 629**, wherein it was observed that if the the plaintiff challenging the decree was not a party to the same and the suit has been filed within limitation from the date of knowledge, the suit cannot be held to be barred by limitation.

This contention of learned counsel for the appellants seems to

have force. The suit could not be held to be time barred. However, on merits the plaintiffs do not have any case since there is no reason to declare the impugned judgment and decree to be illegal, null and void.

Learned counsel for the appellants has further referred to judgment *Hans Raj and others Versus Mukhtiar Singh, 1996(3) RCR(Civil)740* by a Co-ordinate Bench of this Court, which is not applicable since in this case no written family settlement had admittedly taken place, which might have required compulsory registration. The plaintiffs in the earlier civil suit had alleged oral family settlement between them and their father Sh.Leela Krishan under which they had been given ½ share in the suit land, which fact was admitted by Sh.Leela Krishan. As such, the consent decree was passed. As already observed the plaintiffs had pre-existing right in the land, therefore, the decree did not require any registration since no new right had been created.

As regards the judgment *Maya Ram and others Versus Satnam Singh and another, 1967(1) ILR(Punjab) 383* by a Division Bench of this Court, wherein it was observed that land allotted to displaced person in lieu of ancestral land left in West Pakistan will be deemed ancestral. However, this judgment does not help the case of the appellants much due to different facts and circumstances.

With regard to judgment *Bhagmal Versus Surji alias Surjit Kaur and others, 2010(50) RCR(Civil) 855* by a Co-ordinate Bench of this Court wherein it was observed that when a decree obtained by playing fraud inasmuch the defendant was not served in the suit; a suit for setting aside of such a decree is not barred by limitation if filed within time from

the date of knowledge of the fraud by the aggrieved party. This authority does not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

No fraud in this case is proved to have been practiced by the contesting defendants No.1 and 2, who were plaintiffs in the civil suit No.722 of 1991, upon the plaintiffs/appellants, in which consent decree was passed. The judgment *Lekh Kaur Versus Nirmal Singh and others, 2009(12) RCR(Civil)822* by a Co-ordinate Bench of this Court is not applicable since in view of the observations above, it has been found that plaintiffs in that civil suit, who happened to be sons of Sh.Leela Krishan had pre-existing right in the property in dispute.

I find that the judgments recorded by the courts below are detailed and well reasoned, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for interference by this Court while hearing second appeal.

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 passed by the Courts below.

The appeal stands dismissed accordingly.

26.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No