

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

RSA-206-2013(O&M)

Date of decision:-1.8.2019

Smt.Dhan Kaur @ Dhanno

...Appellant

Versus

Sh.Om Parkash Saini through legal representative and others

...Respondents

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

Argued by: Mr.Sanjiv Gupta, Advocate  
for the appellant.

Mr.M.L. Sarin, Senior Advocate with  
Mr.Nitin Sarin, Advocate  
for respondents No.2 to 11.

\*\*\*\*

**H.S. MADAAN, J.**

Briefly stated facts of the case are that plaintiff Smt.Dhan Kaur @ Dhanno wife of Sh.Rampal daughter of late Sh.Chellu Ram had brought a suit for declaration, permanent injunction and recovery against defendants i.e. S/Sh.Om Parkash Saini, Nihal Singh Saini, Rup Kishan Saini, Net Ram @ N.C. Saini, Chet Ram Saini, Bharat Singh Saini and Jain Narain Saini, her real brothers and also

arraying her sisters Smt.Angoori Devi and Smt.Ghando Devi @ Nando Devi as proforma defendants.

As per the version of the plaintiff Sh.Chellu Ram (deceased) father of the parties was owner of agricultural land measuring 67 kanals 2 marlas, two dwelling houses measuring 77 square yards and 91.56 square yards respectively and a vacant plot measuring 166 square yards; that all those properties were self acquired properties of Sh.Chellu Ram; that Sh.Chellu Ram had died on 19.11.1984 leaving behind the parties as his legal representatives, in that way after his death, his estate had devolved upon the plaintiff as well as all the defendants in equal shares; however in the month of September, 2001, the plaintiff came to know that defendants No.1 to 7 were intending to partition the aforementioned properties, at which the plaintiff asked for her share from them but the defendants informed her that the agricultural land had already been partitioned between defendants No.1 to 7 and no share was to be given to her and defendants No.8 and 9; that the plaintiff further came to know that the agricultural land had been got transferred by defendants No.1 to 7 from Sh.Chellu Ram through an alleged decree dated 3.11.1979 passed in Civil Suit No.690 of 1979, which was instituted on 30.10.1979. According to the plaintiff, the proceedings of that suit were false, collusive and benami inasmuch as neither any notice was issued to the defendants in that suit nor any trial of the case took

place and the suit was decreed within four days of its institution; that the decree obtained by defendants No.1 to 7 from Sh.Chellu Ram is collusive, fraudulent and passed in violation of Sections 17 and 49 of the Registration Act as well as against the provisions of Stamp Act, therefore the decree in question is inadmissible and ineffective qua rights, title and interest of the plaintiff, as such liable to be considered as non existent, without affecting the right of succession of the plaintiff in the suit property. *Inter alia*, in the plaint, the plaintiff further contended that she came to know that said agricultural land had been acquired by Government of Haryana vide notification dated 20.3.1989 under Section 4 of the Land Acquisition Act and the Land Acquisition Collector had passed award No.12 dated 20.3.1989 awarding compensation @ Rs.1.25 lacs per acre; that the plaintiff was entitled to get 1/10 share in the compensation, however, defendants No.1 to 7 did not inform the plaintiff about her share, rather they misrepresented themselves as the only heirs of Sh.Chellu Ram and received a sum of Rs.2,22,000/- each as compensation totalling Rs.15,54,000/- on 20.3.1979; that on 13.10.1990, they had filed a reference before learned District Judge without impleading the present plaintiff as a party; that the reference was successful and the compensation was enhanced to Rs.87/- per square yard in addition to that compensation for trees and other superstructure was valued at Rs.1 lakh each; consequently the

defendants No.1 to 7 received a sum of Rs.55,54,500/- as compensation on 21.2.1994; then defendants No.1 to 7 had also filed an appeal before High Court and vide judgment passed in RFA-2692/1992 on 8.7.1999, the compensation was enhanced from Rs.87/- per square yard to Rs.135/- per square yard, as such the defendants No.1 to 7 received a sum of Rs.6,53,800/- each totalling Rs.45,71,000/-on 24.7.2000; thereafter the defendants No.1 to 7 had filed a Special Leave Petition in the Apex Court and that petition is still pending. According to the plaintiff, defendants No.1 to 7 had fraudulently received total compensation of Rs.1,16,79,500/- and misappropriated the share of plaintiff, coming to Rs.11,67,950/-, in that way, the plaintiff is entitled to her share in the compensation to that extent from defendants No.1 to 7 and latter are jointly and severally liable to pay the same to the plaintiff with interest.

On notice, defendants No.1 to 3, 6 and 7 had appeared and filed a joint written statement controverting the material assertions in the plaint contending that the plaintiff had concealed the true and material facts from the court; that she did not have any locus standi to bring the suit; that the suit was time barred; that the Civil Court lacked jurisdiction to try and entertain the suit; that the suit was not maintainable; that the plaintiff was estopped by her own act and conduct from filing the suit and the suit was barred under Section 30 of the Land Acquisition Act. On merits, the answering defendants

contended that the property in suit was ancestral coparcenary property of Sh.Chellu Ram and in a family settlement arrived at in June, 1975, Sh.Chellu Ram had relinquished his coparcenary interest in the agricultural land and the other immovable property described in the schedule and defendants No.1 to 7 being his sons and coparceners became exclusive owners thereof. The answering defendants admitted that such land had been acquired by Government of Haryana and compensation was paid to them. According to such defendants, the plaintiff did not have any right or concern with the suit land, as such she was not entitled to get any share in the compensation, rather ownership rights of the answering defendants were duly entered in the revenue record with respect to the acquired land. Refuting the remaining allegations in the plaint, such defendants prayed for dismissal of the suit.

In the separate written statement filed by defendant No.5, he contested the suit submitting that the ancestral property comprising of agricultural land measuring 67 kanals 2 marlas was partitioned in June, 1975 through an oral partition and family settlement between defendants No.1 to 7; that the defendants No.1 to 7 had filed a suit for declaration bearing No.690/79 in the Court of the then Senior Sub Judge, Gurgaon, which was decreed vide judgment and decree dated 3.11.1979; that at the time of filing of the suit, the answering defendant had asked the other defendants to give

share to the plaintiff as well as defendants No.8 and 9, however, they did not pay any heed; furthermore, the answering defendant was ill; that other defendants No.1 to 4, 6 and 7 had made defendant No.5 to sign the plaint in the said suit; that on the basis of decree dated 3.11.1979, the agricultural land was divided amongst the defendants No.1 to 7, whereas remaining property in the form of two dwelling houses having area of 77 square yards and 91.56 square yards and one vacant plot measuring 166.87 square yards have not yet been partitioned. In the end, such defendant also prayed for dismissal of the suit.

Defendant No.9 filed a separate written statement contending that the property in suit is ancestral property of the parties. Such defendant denied that she, the plaintiff and defendants No.1 to 7 are in possession of the property in suit. According to such defendant, she is also a co-sharer in the joint possession of the suit property and that the impugned judgment and decree are not binding on answering defendant to the extent of share of property in suit and answering defendant is also entitled to the share in the compensation amount.

Defendants No.4 and 8 were proceeded against ex parte.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing the learned counsel for the parties, the trial

Court decided issues No.1 to 3 against the plaintiff, issue No.4 against the defendants being not pressed, issue No.5 in favour of the defendants, issue No.6 in favour of the defendants, issue No.7 in favour of the defendants, issues No.8 and 9 against the defendants being not pressed. Resultantly, the trial Court dismissed the suit of the plaintiff. This was so done vide judgment and decree dated 22.9.2010.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Gurgaon, which was assigned to Additional District Judge, Gurgaon, who vide judgment and decree dated 31.7.2012 dismissed the appeal with costs.

Dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing a 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 her be decreed.

Notice of the appeal was given to the respondents and respondents No.2 to 11 have appeared through counsel.

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

The trial Court in light of the facts and circumstances of the case, evidence adduced by the parties and the law applicable in

the case, has observed that it is admitted case of the parties that Sh.Chellu Ram was earlier owner of the suit property; that he has since expired and defendants No.1 to 7 are his sons whereas plaintiff along with defendants No.8 and 9 are married daughters of Chellu Ram; furthermore marriage of plaintiff was solemnized in the year 1972, whereas defendants No.8 and 9 had got married in the year 1951; that Sh.Chellu Ram had expired on 19.11.1984. According to the plaintiff estate of Sh.Chellu Ram devolved upon all his children i.e. seven sons and three daughters in equal shares i.e. 1/10 share each. According to the plaintiff, the properties left behind by Sh.Chellu Ram had nature of self acquired properties, whereas according to contesting defendants those had nature of ancestral coparcenary properties. However, the plaintiff getting her statement recorded as PW1 had admitted in his cross-examination that suit properties were ancestral coparcenary property of Sh.Chellu Ram.

Coming to legality and validity of the impugned judgment and decree. As a result of partition effected between Sh.Chellu Ram and his sons, the suit land had fallen to share of the defendants. This fact was admitted by Sh.Chellu Ram in the civil suit filed by defendants against him and he had made statement in that regard, consequently judgment and decree dated 3.11.1979 Ex.P4 and Ex.P5, respectively were passed declaring defendants No.1 to 7, who were plaintiffs in that suit to be owners in possession of the suit

land in equal shares.

The plaintiff has not been able to bring any cogent and convincing evidence on file to show that Sh.Chellu Ram had not appeared in the Court and had not filed written statement admitting the claim of his sons, who were plaintiffs in that suit or that he had not got his statement recorded in the Court conceding the claim of the plaintiffs. If the suit land happened to be ancestral coparcenary property, then sons of Sh.Chellu Ram in their capacity as coparceners had a pre-existing right in such land and family settlement/partition/arrangement in that regard could be validly arrived at between Sh.Chellu Ram and his sons and it cannot be termed to be a case where the defendants acquired right in the land for the first time, which might have required compulsory registration of the decree. Furthermore, even if for the sake of argument, it is taken that there was some defect in passing of the decree, then it should have been challenged within a period of three years from the date on which it was passed and if the plaintiff claims that she came to know later on, then onus was very heavy upon her to establish that she was not aware of passing of the decree earlier and came to know about it just before filing of the suit. She has failed to discharge that onus. The impugned decree having been passed on 3.11.1979 could be challenged within three years thereof, the period of limitation prescribed under Limitation Act for filing a suit for declaration i.e.

up to 3.11.1982, however, it was filed on 17.11.2001. Though according to plaintiff, she had come to know about the passing of decree in September, 2001 only, but that contention is not believable. Sh.Chellu Ram having expired on 19.11.1984 and mutation having been sanctioned in favour of defendants No.1 to 7 on the basis of impugned decree, it does not seem plausible and convincing that the plaintiff was unaware of the decree for such a long time. It is very easy to come up with a plea that plaintiff was not aware of the decree earlier and came to know about it only sometime before filing of the suit. If such type of contentions are believed, without the plaintiff bringing enough cogent and convincing evidence to show that, then the provisions of Limitation Act would stand frustrated. A man may come after 30 years say 50 years or even more and seek a declaration stating that he was not aware of passing of decree earlier. Of course if the plaintiff is successful in proving by bringing sufficient cogent and convincing evidence on record that she had no knowledge of the impugned judgment and decree earlier to the date claimed by her, then limitation can be counted from the date of knowledge but not when such stand is taken without establishing the plea of gaining knowledge just before filing of the suit by bringing enough supporting evidence. Here the plaintiff has not been successful in crossing the barrier of limitation. Therefore, the suit is hopelessly time barred. The earlier law that limitation does not apply to a void

order no longer holds good. Even a void order is required to be challenged and got set aside within the period of limitation, otherwise the same remains in existence and cannot simply be wished away.

The plaintiff is not shown to have submitted any objections to the Land Acquisition Collector claiming a share in the compensation. She did not move any application before Land Acquisition Tribunal or in any Court of law claiming share in the compensation. The trial Court has rightly observed that the impugned judgment and decree cannot be declared as null and void and cannot be set aside having been challenged much before the period of limitation.

As regards the other prayer made by plaintiff that an injunction may be passed in favour of the plaintiff against defendants No.1 to 7 restraining such defendants from partitioning the remaining property i.e. two double storeyed dwelling houses measuring 77 square yards and 91.56 square yards bearing No.9 and 10, respectively and one vacant plot measuring 166.87 square yards without giving share to plaintiff, such relief was also declined observing that no documentary evidence of title to such houses and plot have been placed on record by the plaintiff and plaintiff had failed to prove that such houses and plot were self acquired property of Sh.Chellu Ram and furthermore no suit for partition with regard to

those houses or plot is pending before any Court. The Trial Court has observed that in case any partition of the houses or plot take place, then plaintiff can challenge the same, if she is not satisfied with the partition but no injunction could be granted to her. No fault can be found with such observations made by the trial Court in denial of relief of permanent injunction to the plaintiff. Since the plaintiff had not been successful in getting the impugned decree declared as null and void, therefore, her claim of 1/10 share in the compensation amount awarded, was also rejected and no fault can be found with such approach of the trial Court. The trial Court further observed that the plaintiff had filed a simple suit for declaration without asking for any consequential relief, therefore, the suit was not maintainable.

Learned Additional District Judge, Gurgaon was in agreement with the trial Court on all these findings and had upheld the judgment and decree passed by the trial Court.

Learned counsel for the appellant has contended that the plaintiff/appellant has a share in two dwelling houses and vacant plot left behind by Sh.Chellu Ram after deletion of Section 23 of the Hindu Succession Act by Amendment Act, 2005. In support of his that contention, he has referred to judgment **G. Sekar Versus Geetha and others, 2009 AIR(SC) 2649**. As far as right of appellant/plaintiff in the dwelling houses and vacant plot that can be established only during the trial, the appellant/plaintiff may file a suit of partition in

that regard, which can be disposed of by the Court in accordance with law.

Learned counsel for the appellant has further referred to judgment **Balbir Singh Versus Bant Singh, 1996(3) RCR(Civil) 351** by a Single Bench of this Court, wherein it was observed that if the property in suit is held to be ancestral then the respondent/plaintiff gets an interest in it by birth treating it as the coparcenary property and if it is held to be non ancestral property in the hands of appellant/defendant, he could not pass on the same to defendants i.e. son and daughter-in-law by suffering consent decree because those defendants had no pre-existing rights in their favour. It was further observed that any decree against provisions of the Registration Act and the Transfer of Property Act is bound to be held as void.

There cannot be any dispute with such proposition of law but here in view of detailed discussion above, it has been observed that the property in the hands of Sh.Chellu Ram was ancestral coparcenary property, in which his sons had acquired interest by birth, that means they had a pre-existing right therein, which was simply recognized by way of impugned decree. Therefore, the same did not require registration and it cannot be said to be in violation of the provisions of Registration Act and Transfer of Property Act.

Other judgments cited by the learned counsel i.e.

**Smt.Kamla Devi Versus Smt.Gainda Devi and others, 2008(1) ICC**

546, Smt.Badami(Deceased) by her L.R. Versus Bhali, 2012 AIR SC(Civil) 1974, and Ram Dutt and others Versus Ashok Kumar and others, 1984 PLR 32, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

Furthermore, when the appeal was filed, the Court fee affixed thereon was deficient but that deficiency has since been made up. Learned counsel for the respondents has argued that while issuing notice of motion on 2.4.2014, the contention of learned counsel for the appellant was recorded that the Appellate Court acted under a mistaken belief that Section 23 of the Hindu Succession Act, 1956 is still subsisting whereas said provision has already been repealed by the Amendment Act of 2005 and therefore the daughter has a right to seek partition of the dwelling unit at any time.

I find that the Courts below had rejected the claim of plaintiff in view of the settled legal and factual position and not for the reason that plaintiff did not have locus standi to seek partition.

The judgments and decrees passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

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.

1.8.2019

Brij

**(H.S.MADAAN)**

**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**