

RSA-2969-2013(O&M) &
SAO-56-2002(O&M)

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

(1) RSA-2969-2013(O&M)

Mam Raj

...Appellant

Versus

Saroj and others

...Respondents

(2) SAO-56-2002(O&M)

Mam Raj

...Appellant

Versus

Ram Kali and others

...Respondents

Date of Decision:-5.8.2019

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

Argued by: Mr.C.B. Goel, Advocate
for the appellant(s) in both RSA and SAO.

Mr.Vijay S. Kajla, Advocate
for the applicant/respondent in SAO-56-2002.

Mr.Satbir Rathore, Advocate
for the respondents No.1 and 2 in RSA-2969-2013.

Mr.Parveen Chauhan, Advocate
for respondent No.3 in RSA-2969-2013.

H.S. MADAAN, J.

By this order, I shall dispose of RSA-2969-2013(O&M) and
SAO-56-2002(O&M) filed on behalf of appellant – Mam Raj.

RSA-2969-2013(O&M)

Briefly stated, facts of the case are that plaintiff Mam Raj

claiming himself to be adopted son of Sh.Kirpal Singh, a resident of village Sagga, Tehsil Nilokheri, District Karnal had brought a suit for declaration and permanent injunction against defendants i.e. Smt.Sabiri Devi – widow of Sh.Kirpal Singh, Smt.Saroj – widow of Sh.Mam Chand, Baby Husan – minor daughter of Sh.Mam Chand, Sh.Mahinder Singh son of Sh.Panna Singh as well as State of Haryana through Collector, Karnal.

In that suit, the plaintiff had challenged the judgment and decree dated 15.9.1989 passed by the then Sub-Judge, Karnal in Civil Suit titled “Mam Chand Versus Smt.Satbiri” with regard to land measuring 29 kanals 7 marlas being 1/9th share of the total land measuring 265 kanals situated at village Sagga, Tehsil Nilokheri, District Karnal (hereinafter referred to as the suit property) as well as sale deed No.1142 dated 15.1.2001 executed by Smt.Saroj – defendant No.2 in favour of Sh.Mahinder Singh – defendant No.4 with regard to the land measuring 6 marlas out of the suit land, alleging that the same were result of fraud, misrepresentation and not binding upon rights of the plaintiff. By way of praying for grant of permanent injunction, the plaintiff craved for issuance of a restraint order against defendant No.4 Sh.Mahinder Singh from alienating/transferring the suit land or part thereof in favour of defendant No.5.

As per the version of the plaintiff S/Sh.Kirpal Singh, Raghbir Singh and Daya Ram sons of Sh.Kundan Singh were owners in joint possession of the suit land in equal shares; that Sh.Raghbir Singh had died on 17.6.1980 without leaving any widow or issue, therefore, his share was inherited by his two brothers Sh.Kirpal Singh and Sh.Daya Ram and sister

Smt.Dakho Devi, in that way Kirpal Singh and Daya Ram became co-sharers to the extent of 4/9 share, whereas Smt.Dakho Devi became co-sharer to the extent of 1/9th share; that Kirpal Singh also died on 8.4.1981 leaving behind Smt.Sabiri Devi - defendant No.1 as his widow, Ram Kali and Roshni Devi as daughters, Krishni daughter of Kela Devi, Daler Singh, Janak Singh, Jasmer Singh, Tarsem Singh, Desraj and Joginder Singh sons of Kela Devi, a pre-deceased daughter of Kirpal Singh; that under the Hindu Succession Act, the defendant No.1 and the persons mentioned above would have been inherited the estate of Kirpal Singh, however Kripal Singh had executed a valid Will dated 7.4.81 bequeathing his entire share in the abovesaid land besides all his moveable and immovable properties in favour of the plaintiff being his adopted son; that the plaintiff had earlier filed a suit for declaration that he is owner in possession of the land measuring 117 kanals 16 marlas being 4/9 share in the suit land on the basis of Will dated 7.4.1981 and during the pendency of that suit, the plaintiff had also filed an application restraining the defendants in that suit including the present defendant No.1 from alienating/transferring any portion of the suit property; that counsel for defendant No.1 and other defendants, namely, Sh.A.K. Sawhney, Advocate had made a statement before the Court on 13.11.1986 that the defendants would not alienate the land till the final decision of the suit, however the defendant No.1 in utter violation of the undertaking given in the Court transferred the land measuring 29 kanals 7 marlas being 1/9th share of the suit land in favour of Mam Chand, now deceased husband of defendant No.2 and father of defendant No.3 by way of the impugned

decree; that mutation No.1398 was also sanctioned by Assistant Collector 2nd Grade, Nilokheri on the basis of said decree; that on death of Sh.Mam Chand, his estate was inherited by defendants No.2 and 3 vide mutation No.1628 sanctioned on 29.5.1994; that the suit bearing No.447 of 1988 filed by the plaintiff was decreed as compromised and the plaintiff became owner in possession of the land to the extent of 1/2 share in the land measuring 117 kanals 16 marlas left by Kirpal Singh deceased; that defendant No.1 had filed an appeal against that judgment and decree. According to the plaintiff, the alienation effected by defendant No.1 during the pendency of the earlier suit is totally illegal, null and void and ineffective qua the rights of the plaintiff since the decree had been suffered in disobedience of the undertaking given by the defendant No.1 in the Court through her counsel; that the suit land is still joint and has not been partitioned between the co-sharers, as such, no co-sharer is competent to transfer any specific share/khasra number; that defendant No.2 – Smt.Saroj Devi had illegally sold land measuring 6 marlas being 6/5294 share of the aforesaid land in favour of defendant No.4; that defendant No.4 is in possession of Phirni land, which he has occupied illegally; thereafter defendant No.4 wanted to transfer the said land in favour of defendant No.5 in order to create complications, not listening to the requests of the plaintiff to desist from doing so. Feeling aggrieved by such act of defendants, the plaintiff had filed the suit in question.

On notice, the defendants put in appearance. Defendants No.1 to 3 had filed a joint written statement, whereas defendant No.4 came up with a separate written statement.

As far as defendant No.5 is concerned, it failed to file any written statement, accordingly its defence was struck off vide order dated 28.11.2001.

In the joint written statement filed on behalf of defendants No.1 to 3, they had raised preliminary objections that the plaintiff had no locus standi to file and maintain the suit in question; that the suit was not maintainable in the present form and was hopelessly time barred; that the suit was bad for non-joinder and mis-joinder of necessary parties; that the plaintiff was estopped by his own act and conduct from filing the present suit since the plaintiff had misrepresented himself to be the adopted son of Kirpal Singh since deceased. On merits, the answering defendants admitted that defendant No.2 is real mother of defendant No.3 and that deceased Kirpal Singh inherited the land from his ancestor and further that Kirpal Singh had died leaving behind his legal representatives. Such defendants, however denied that Kirpal Singh had ever executed any Will; further the impugned decree was defended as legal and valid, submitting that the estate was inherited by legal representatives of Kirpal Singh under the Hindu Succession Act; furthermore no compromise had taken place between the plaintiff and answering defendant No.1 and judgment and decree relating to the said compromise are against the evidence. Refuting the remaining assertions in the plaint, such defendants prayed for dismissal of the suit.

In the written statement submitted by defendant No.4, he had taken up the preliminary objections to the effect that the suit was not maintainable; that the suit was not properly valued for the purposes of

Court fee and jurisdiction; that the plaintiff was estopped by his own act and conduct from filing of the present suit; that the suit was an abuse of process of law; that the plaintiff had no cause of action to file the suit. On merits, the answering defendant denied that Kirpal Singh had ever bequeathed his property to the plaintiff, rather contended that the property was inherited by successor-in-interest of Kirpal Singh. In the end, such defendant also prayed for dismissal of the suit.

The plaintiff had filed replications controverting the allegations in the written statements whereas reiterating the averments in the plaint.

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

1. Whether the plaintiff is entitled for a decree for declaration with consequential relief of permanent injunction, as prayed for? OPP.
2. Whether the plaintiff has no locus-standi to file and maintain the present suit? OPD.
3. Whether the plaintiff has not come to the Court with clean hands and has suppressed the true and material facts from the Court?OPD.
4. Relief.

To establish his case, the plaintiff got his own statement recorded as PW1 and reiterated on oath his case as given in the plaint and in addition to that he tendered in evidence documents Ex.P1 to Ex.P10.

On the other hand, the defendants examined Smt.Saroj(defendant No.2) as DW1, Sh.Jaswant Singh as DW2,

ShMahinder Singh (defendant No.4) as DW3 and Husan(defendant No.3 as DW4 besides tendering certain documents.

After hearing learned counsel for the parties, the trial Court dismissed the suit of the plaintiff. This was so done vide judgment and decree dated 10.8.2010.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal In the Court of District Judge, Karnal, which was assigned to Additional District Judge, Karnal, who vide judgment and decree dated 11.1.2013 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 him be decreed.

Notice of the appeal was issued to the respondents. Respondents No.1 to 3 have appeared through counsel.

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

The plaintiff had based his claim on the fact that he was adopted son of Sh.Kirpal Singh, who had executed a Will in his favour, in that way, he had challenged the impugned decree suffered by Smt.Saroj for the reason that the plaintiff had filed a suit for declaration where counsel for the defendants including defendant No.1 had made a statement that defendants would not alienate the suit property. However, the plaintiff has not been able to prove his adoption by Sh.Kirpal Singh or

Sh.Kirpal Singh having executed any Will in his favour by bringing on record enough cogent and convincing evidence. Since the suit for declaration filed by the plaintiff had been dismissed by the trial Court and no relief was granted to him by First Appellate Court even, therefore the case of the plaintiff is not proved on record. Furthermore, the suit having not been filed within the period of limitation prescribed, was time barred. The decree was passed in the year 1989, whereas it was challenged in the year 2001. The limitation prescribed under the Limitation Act for filing a suit for declaration is three years. The plaintiff has been unable to cross the hurdle of limitation. The trial Court had specifically observed that there was no document on the file to prove that Mamraj was an adopted son of Sh.Kirpal Singh and there was no evidence to show that defendant No.1 had violated the order of the Court by alienating the suit property despite order of the Court restraining the alienation being there. It has further been observed that the plaintiff was unable to establish that he was ignorant regarding passing of the impugned decree and he gained knowledge regarding the same, some time before filing of the suit. The plaintiff had further failed to establish that the impugned decree was result of fraud. As such, the claim of the plaintiff was rejected.

The First Appellate Court was also of the same view. Learned Additional District Judge, Karnal has dealt with all the contentions raised on behalf of the plaintiff, ultimately finding them to be devoid of any merit.

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.

Thus, RSA-2969-2013 stands dismissed accordingly.

SAO-56-2002(O&M)

Now taking up SAO-56-2002 filed on behalf of the appellant.

It may be mentioned here that in a suit for declaration filed by the plaintiff claiming himself to be owner in possession of 4/9 share of land on the basis of Will dated 7.4.1981 said to have been executed by Sh.Kirpal Singh in his favour, a compromise deed said to have been executed entered into between the plaintiff and defendant No.1, was filed in the Court with a prayer to decide the case in terms thereof. Defendants No.2, 4 to 10 had moved an application opposing the request stating that no decree on the basis of alleged compromise could be passed.

Issues were framed in that regard, which are as under:

1. Whether Janak Singh has not signed the written statement as yet? O.P.Objector.
2. Whether Shri B.S. Rathore, Advocate has no power to file written statement on behalf of defendant No.2 to 10? O.P. Objector.
3. Whether the compromise is not lawful? O.P.Objector.
4. Whether the objectors are estopped from making the present application as alleged? OPR.
5. Whether the application is not maintainable? OPR.

After hearing learned counsel for the parties, the trial Court dismissed the application and the suit was decreed as compromised in terms of written compromise Ex.C1 vide judgment and judgment dated

17.4.1999.

An appeal against the said judgment and decree was filed in the Court of learned District Judge, Karnal, which was assigned to learned Additional District Judge, Karnal, who vide judgment and decree dated 17.9.2002 accepted the same and the judgment and decree passed by the trial Court were set aside, giving direction to the trial Court to decide the suit on merits.

Feeling aggrieved by the judgment and decree passed by the lower Appellate Court, the plaintiff has filed the present appeal.

It comes out that the First Appellate Court was justified in rejecting the compromise and directing that the suit be decided on merits. The First Appellate Court has given valid reasons for arriving at such conclusion, which are as under:

- (i) that in appeal original plaintiff and defendant No.1 were the main contestants; however, they joined hands, entered into compromise Ex.C1 and got the suit decreed as per their wishes to the exclusion of all the other heirs of Kirpal Singh and in appeal also, the widow of Kirpal Singh was opposing the right of her children and grandchildren to challenge the compromise;
- (ii) that though defendants No.1 to 10 had filed a joint written statement mentioned that defendant No.1 had become the owner of the estate of Kirpal Singh but that did not mean that defendants No.2 to 10 had relinquished their right in the property for all times to come; furthermore defendants No.7 to 10 were minors at that time and no compromise could have been entered into without

following the requisite procedure, in addition to that no compromise could have been entered into by Sabiri Devi alone during pendency of the suit in which interest of defendants No.2 to 10 was also involved, in that way, it could not be said that because remaining defendants had admitted the widow to have become the owner on the basis of the Will, they have no right in the property;

(iii) that the interest of the minors are not at all protected and the compromise was detrimental of their interest because they were deprived of the half share, which went to the plaintiff, for all times to come and even if Sabiri would die intestate, the other heirs would get share only out of the half share, she kept for herself;

(iv) that the reasoning given in the compromise is quite flimsy for parting with her share in the property by defendant No.1 in favour of the plaintiff; the compromise contained a stipulation that in case any one of the Wills or both the Wills were held to be valid, still none of the other defendants would have any right in the property, which clause in the compromise is absolutely illegal, firstly because both the Wills could never have been held to be valid and secondly because the other defendants could not be deprived of their ultimate rights to the property if the Will in favour of defendant No.1 was held to be valid and in the given situation without watching the interest of the minors, the matter could have been settled hastily as done by the plaintiff and defendant No.1; and

(v) that when defendants No.2 to 10 had filed a joint written statement with defendant No.1, they felt that the said defendant had

no interest adverse to them because they were together challenging the Will in favour of the plaintiff, with a view that he should not get anything out of the property of Kirpal Singh with which he had no concerned, therefore, defendant No.1 by herself could not have been admitted the right of the plaintiff even on behalf of the other heirs of Kirpal Singh, who always meant to challenge the right of the plaintiff to any part of the suit property, in that way defendant No.1 could not have alone get the suit decreed against the other defendants without their consent.

Therefore, the decree passed on the basis of compromise was not sustainable and was set aside.

I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Karnal.

No substantial question of law arises in the SAO.

The SAO stands dismissed accordingly.

Since the regular second appeal and SAO stand dismissed, the miscellaneous application, if any, pending in the same stand disposed of accordingly.

5.8.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No