

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

RSA No. 4550 of 2019 (O&M)

Date of decision : November 28, 2019

Som Kumar Jain and others

....Appellants

Versus

Rattan Mala Jain through LR's and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Amit Kumar Jain, Advocate
for the appellants.

LISA GILL, J.

Appellants - plaintiffs are aggrieved of judgment and decree dated 26.05.2014 passed by the learned Civil Judge (Senior Division), Jind whereby the suit for declaration filed by him was dismissed as well as judgment and decree dated 03.09.2019 passed by the learned Additional District Judge, Jind, whereby his appeal was dismissed.

Brief facts necessary for adjudication of the case are that the appellants – plaintiffs filed a suit seeking declaration to the effect that they are the owners in possession of the plot/fallen house as detailed in the plaint alongwith consequential relief of permanent injunction for restraining the defendants from alienating the suit property, dispossessing the plaintiffs and raising any sort of construction thereon. It is pleaded that Banarsi Dass was the owner of house in question, which had fallen due to natural wear and tear and now is in the shape of a plot with fallen debris. It is further pleaded that Banarsi Dass had two sons namely Arjan Lal and Lal Chand. Chameli Devi was the wife of Arjan Lal. Gian Chand was the son of Lal Chand and

except the abovesaid, plaintiffs were not aware of any other legal heirs of Arjan Lal and Chameli Devi. However, in the year 1985 one Rattan Mala – defendant No.1 and Nagesh Kumar – defendant No. 2 staked their claim to the suit property with Rattan Mala claiming herself to be the daughter of Ulfat Rai i.e. another son of Arjan Lal from a previous wife and defendant No. 2 son of Rattan Mala claimed to be the adopted son of Ulfat Rai. It is further submitted that after the death of Arjan Lal the suit property was inherited by Chameli Devi and Gian Chand and 1/2 share of the suit property was sold by said Gian Chand to Shyam Lal Gupta and Nirmal Chand vide registered sale deed No.691 dated 9.6.1979 for a total sale consideration of Rs.4000/- alleging that the portion sold by him had fallen to his share in a family settlement. Thereafter said Shyam Lal and Nirmal Chand sold that 1/2 share to appellants-plaintiffs vide registered sale deed No.913 dated 3.12.1981 for a total sale consideration of Rs.10,000/- and possession of the said portion of the suit property was handed over to appellants-plaintiffs. The appellants-plaintiffs thereafter purchased the remaining 1/2 share also, from Chameli Devi vide registered sale deed No.2353 dated 3.12.1981 for a total sale consideration of Rs.5000/-. The appellants-plaintiffs, thus, claimed to be the owners in possession of the entire suit property. Necessary entries in the record of M.C. Jind for the purpose of house tax and property was bearing No.697 in ward No.22 were carried out to reflect the appellants-plaintiffs as the owners. However, later on the house had collapsed due to heavy rain. The household and sanitary goods of the appellants-plaintiffs are still buried thereunder. It is further pleaded that the respondent-defendant No.1 namely Rattan Mala Jain claiming herself to be a legal heir of deceased Arjan Lal filed a civil suit

bearing No.419 of 17.07.1986 against the present appellants-plaintiffs and one Shanti Sarup, who was a tenant over a part of suit property. Rattan Mala alongwith Nagesh Kumar claimed herself to be the owner of the entire suit property. This suit was contested by the present appellants-plaintiffs by filing their written statement dated 17.07.1986 but the present respondents-defendants adopted pressure tactics by taking help from the police and under threats of police that suit was purportedly compromised and a written compromise was forcibly got signed from the present appellants-plaintiffs. It was mentioned in the compromise that the parties agreed for the suit to be decreed in favour of the then plaintiff as Chairman of the Trust namely, "Arjan Lal Ulfat Rai Jain" being managed by Rattan Mala Jain. Judgment and decree dated 24.12.1988 to this effect was passed but the same as well as compromise in question are claimed to be illegal, null and void on the grounds that the alleged compromise was under police pressure, the recitals of agreement were totally vague and meaningless besides transfer of the suit property in favour of a Trust could not have been effected without even the existence of that Trust and furthermore no compromise could be effected without registration as the suit property was having the value of more than Rs.2,00,000/-. The Trust, it is pleaded, could have been created only by a trust deed registered under the Act and not by a simple declaration in the form of compromise. It is further pleaded that even if it is presumed that the suit property has become the property of Trust 'Arjan Lal Ulfat Rai Jain' even in that eventuality defendant No.1 is not entitled to alienate the suit property because the same is still recorded in the name of appellant-plaintiff No.2 namely Ashok Kumar Jain as owner. The respondents-defendants were requested not to take the possession of suit property from appellants-

plaintiffs illegally and unauthorizedly but they are adamant to alienate the same and to raise the construction thereon. Hence, the suit was filed.

The suit was contested by the respondents-defendants. The defendants filed a joint written statement while taking preliminary objections that this suit is not maintainable for setting aside the judgment and decree passed on the basis of a compromise. It is further pleaded that this suit is hopelessly time barred because decree dated 24.12.1988 has been challenged only in March, 2012 and the suit is bad for non-joinder of necessary parties because the 'Trust' has not been impleaded despite being a necessary party. It is submitted that appellants-plaintiffs are not in possession of the suit property, therefore, suit for declaration is not maintainable and the suit filed by the appellants-plaintiffs is false and frivolous. It is pleaded by the defendants on merits that Chameli Devi was the widow of Arjan Lal and Ulfat Rai Jain was his son. After the death of Arjan Lal, the house was inherited by widow Chameli Devi and son Ulfat Rai in equal shares and thereafter on the death of Ulfat Rai in the year 1975, his share was inherited by his daughter Rattan Mala and son Nagesh Kumar in equal shares and after the death of Chameli Devi her share was also inherited by respondents-defendants in equal shares, thus the respondents-defendants were the owners of the house in question. It is submitted that if there is any sale deed in favour of appellants-plaintiffs the same is illegal, null and void, forged and fabricated because Chameli Devi never executed any sale deed. Moreover, the sale deed, if any, was without consideration. It is also pleaded that the appellants-plaintiffs never entered into possession of the suit property nor they ever became the owners thereof, however, by taking undue advantage of the absence of respondents-defendants, the

appellants-plaintiffs managed to get their names entered in the house tax assessment register. It was denied that the present respondents-defendants had played any pressure tactics by taking police help in getting the suit compromised, rather the compromise in question was recorded in Court on the basis of statements of parties including the appellants-plaintiffs and the appellants-plaintiffs had admitted the execution of compromise with their free will. It was also denied that the Trust was not in existence at that time. Dismissal of the suit was prayed for.

Replication to the written statement of respondents-defendants was filed by appellants-plaintiffs, wherein the preliminary objections of respondents-defendants were denied and the contents of plaint were reaffirmed. It was further pleaded that the trust deed placed on record is dated 09.04.2010 which shows that the alleged trust deed does not include the suit property. Moreover, under Section 6 of the Indian Trust Act, the Trust could be created only by indicating with reasonable certainty by words or acts i.e. an intention to create a trust, by expressing the purpose of the trust, by stating the beneficiary, by clearly stating the trust property and transfer of the trust property to the transferee. By denying other averments contained in the written statement, the decretal of the suit was prayed for.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiffs are owners in possession of disputed property as mentioned in detail in para No. 1 of the head note of the plaint on the grounds as alleged?OPP.
2. Whether the plaintiffs are entitled for permanent injunction, if so to what effect?OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD.

4. Whether the plaintiffs have no cause of action or locus standi to file the present suit? OPD.

5. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record concluded that the plaintiffs had failed to prove their case. Their suit was, accordingly, dismissed with costs. It is observed by the learned trial Court that the defendants had filed a suit bearing No. 419 dated 17.07.1986 against the plaintiffs – appellants. The said suit was decreed on the basis of a compromise which was made a part of decree dated 24.12.1988. No fraud has been committed upon the plaintiffs, who suffered a joint statement in Court admitting the factum of compromise. Judgement and decree dated 24.12.1988 was never challenged and the dispute regarding ownership of the property already stood settled. Appeal filed by the appellants was dismissed by the learned Additional District Judge, Jind vide judgment dated 03.09.2019. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants submits that the Trust namely 'Arjan Lal Ulfat Rai Jain' was not even in existence at the time of passing of decree dated 24.12.1988, therefore, it could not have been passed in favour of the Trust. The Trust came into picture in 2010. The Trust had no pre-existing right in the suit property, therefore, without registration of the decree no title could have passed thereto. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 26.05.2014 passed by the learned Civil Judge (Senior Division), Jind as well as judgment and decree dated 03.09.2019 passed by the learned Additional District Judge, Jind be set aside and suit filed by the appellants be decreed throughout.

I have heard learned counsel for the appellants and have gone

through the file with his able assistance.

It is a matter of record that the earlier suit filed by the defendants against the plaintiffs resulted in passing of judgment and decree dated 24.12.1988 on the basis of a compromise arrived at between the parties. The allegations now sought to be levelled by the plaintiffs are that they have been pressurised and coerced to enter into the said compromise. No such objection was admittedly ever raised at any point of time prior to the filing of the suit on 13.03.2012. Appellant – plaintiff No. 2 in his cross examination has admitted that there was no presence of any police personnel when the compromise was arrived at and that no complaint in this respect had ever been made to any authority at that time. Both the learned courts below have rightly held that the judgment and decree based on the compromise was passed on 24.12.1988 and the suit in question has been filed after almost 24 years whereas challenge to a decree based on fraud or on a statement made under coercion can be challenged within three years of the passing of the same. Learned counsel for the appellants is, however, unable to deny that the present appellants were very much party to the suit which resulted in decree dated 24.12.1988. It is specifically mentioned that a compromise had led to the passing of the decree dated 24.12.1988 and both sale deeds dated 25.06.1979 and 03.12.1981 on the basis of which the present suit has been filed are stated to have been cancelled. No action was ever taken by the appellants since the passing of the decree in 1988 till the filing of the present suit in 2012. The plaintiffs - appellants were very well aware of the judgment dated 24.12.1988. It is not their case that they were not aware of passing of the said judgment and decree. They voluntarily gave up their right to the suit property and allowed the sale deeds vide which they

had purchased the suit property, to be declared null and void. There is indeed no merit in the argument raised by learned counsel for the appellants that the Trust was not a party to the earlier proceedings and in fact came into picture in the year 2010 only and due to this reason, no rights could accrue to the Trust as it never had any pre-existing rights in the property. A perusal of the compromise, a copy of which was produced in Court at the time of arguments, reveals that it is mentioned therein that the suit be decreed in favour of the plaintiffs i.e. Rattan Mala Jain as Chairman of the Trust namely 'Arjan Lal Ulfat Rai Jain', which would be fully managed by Mrs. Rattan Mala Jain. It is further mentioned that the Trust shall consist of the members to be appointed by the plaintiff - Rattan Mala Jain as the Chairman of the Trust. It is categorically mentioned that both the sale deeds No. 2353 dated 03.12.1981 and 913 dated 25.06.1979 besides will dated 29.09.1977 shall stand cancelled. It is further observed that the compromise was arrived at out of the free will and with the consent of the parties without any pressure.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law, is involved for consideration in this appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 26.05.2014 passed by the learned Civil Judge (Senior Division), Jind as well as judgment and decree dated 03.09.2019 passed by the learned Additional District Judge, Jind which calls for any interference by this Court in second

appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

November 28, 2019
rts

(Lisa Gill)
Judge

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