

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

**RSA No.63 of 2013 (O&M)
Date of decision: 04.12.2019**

Hukam Chand

.....Appellant

Versus

Jai Karan and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajeev Godara, Advocate,
for the appellant.

None for the respondents.

Ritu Bahri, J.

CM No. 181-182-C of 2013

For the reasons mentioned in the applications, same are allowed and delay of 38 days in filing and 71 days in re-filing of the appeal is condoned.

RSA No.63 of 2013

This appeal has been filed against the judgment dated 10.04.2012 passed by the District Judge, Sirsa, dismissing an appeal filed by plaintiff-appellant (hereinafter referred to as 'the plaintiff') against the judgment and decree dated 19.10.2010 passed by the Civil Judge (Senior Division), Sirsa, whereby suit filed by him (plaintiff), has been dismissed.

Hukam Chand-plaintiff (appellant herein) filed a suit for declaration with the averments that defendant-Jai Karan was his son. About 12/13 years ago, daughter-in-law of plaintiff i.e. wife of Harbhajan Lal @ Madan Lal-proforma defendant No.3 (another son of plaintiff) had died.

After her death, some of the relatives asked the plaintiff that he should get transferred some property in the name of minor grandson namely Harish Kumar son of Harbhajan Lal @ Madan Lal, so that life of minor could be secured. Thereafter, plaintiff and his son Harbhajan Lal decided to transfer some land in the name of minor. This fact was also brought to the notice of defendant No.1-Jai Karan. Defendant No.1 obtained thumb impressions of plaintiff on some papers and Vakalatnama etc. on the pretext that in order to transfer the land, a civil suit was required to be filed. Accordingly, Civil Suit No.313/1996, titled as 'Harish Kumar and another vs. Hukam Chand and another' was filed in civil court at Sirsa, which was decreed vide judgment dated 21.03.1996 on the basis of written statement filed by present plaintiff-appellant and his another son namely Harbhajan Lal @ Madan Lal, who were arrayed as defendants in that suit. It was further stated that in fact, the decree dated 21.03.1996 was passed by the Court on the basis of family settlement, which was actually executed between Harish Kumar, present plaintiff and his another son Harbhajan Lal alias Madan Lal. The same was not effected between the present plaintiff and defendant No.1 Jai Karan. No land was ever given by plaintiff to defendant No.1. Rather, defendant No.1, while taking advantage of illiteracy of plaintiff, had committed fraud upon him and got transferred the suit land in his own name instead of getting the same transferred in favour of Harish Kumar, minor. Therefore, plaintiff filed the instant suit for declaration praying that the impugned judgment and decree dated 21.03.1996 was liable to be set aside.

Upon notice, defendant No.1 filed written statement taking preliminary objections with regarding to maintainability, limitation, estoppel, concealment of true facts etc. On merits, it was denied that

defendant No.1 had obtained thumb impressions of the plaintiff on certain papers, vakalatnama etc. for the purpose of transferring land in the name of Harish Kumar son of Harbhajan Lal alias Madan Lal. It was stated that in fact, as per family settlement, the land in dispute had fallen to his share, therefore, the plaintiff had suffered decree dated 21.03.1996 in favour of defendant No.1. Plaintiff himself appeared before the Court and filed written statement while admitting the claim of defendant No.1. Consequently, the civil suit was decreed, on the basis of which, mutation had been sanctioned in favour of defendant No.1. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

Defendant No.2 did not appear before the trial Court despite service, therefore, he was proceeded against exparte. Defendant No.3 was given up by the plaintiff on 16.09.2010.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is owner in possession of 1/3 share of the suit land and judgment and decree dated 21.03.1996 passed in civil suit No.313 of 1996, titled as Harish Kumar vs. Hukam Chand etc. vide which, defendant No.1 has been declared owner in possession of the suit land, is illegal, null and void and is not binding upon the rights of the plaintiff, as prayed for? OPP
2. Whether revenue record is liable to be corrected in favour of plaintiff, as prayed for? OPP
3. Whether the suit is not within limitation? OPD
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the plaintiff has concealed true and material facts from the Court, if so, its effect? OPD

6. Whether the suit is false and frivolous one and is liable to be dismissed with special costs? OPD

7. Relief.

Trial Court, after hearing learned counsel for the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Heard.

Before the trial Court, plaintiff-Hukam Chand stepped into the witness box as PW-1 and tendered certain documents. Trial Court had observed that except his own testimony, plaintiff had led no other evidence to prove that fraud had been committed upon him. In the previous suit, plaintiff and his another son namely Harbhajan Lal were impleaded as defendants. Therefore, Harbhajan Lal could be the best witness to support the case of plaintiff. But, the said witness was not examined by the plaintiff, therefore, adverse inference has been drawn against him. Moreover, plaintiff had not made any complaint with regard to the alleged fraud being committed upon him. On the other hand, defendant No.1 had got summoned the recover of previous suit between the parties, a perusal of which showed that present plaintiff and his son Harbhajan Lal were impleaded as defendants in that suit, wherein they filed written statement Ex.D1 admitting the contents of plaint (therein) and suffered a statement Ex.D2 in favour of plaintiff (therein). On the basis of admitted written statement Ex.D1 and statement Ex.D2, judgment and decree were passed. Both the above documents were got proved through Sh. Vinod Sharma, Advocate (DW-2), who was counsel of the present plaintiff in that suit. He deposed that he had prepared the written statement at the instance of Hukam Chand (present plaintiff) and Harbhajan Lal. The first appellate Court has further observed

possession has been sought. In the absence of seeking relief of possession, suit simpliciter for declaration was not maintainable. Both the Courts below have observed that suit of the plaintiff was hopelessly barred by limitation as the same was filed on 26.08.2008, whereas the judgment, in the previous suit, was passed on 21.03.1996. Hence, the present suit was filed after expiry of almost 12 years. There was no explanation for such a long delay in filing the suit. Ultimately, the Courts below have held that the judgment and decree dated 21.03.1996 were validly and legally suffered by present plaintiff (appellant) and there was no ground to set aside the same. With these observations, the suit was dismissed.

After hearing learned counsel for the appellant and having examined the impugned judgments and documents relied upon by the parties, this Court is of the view that plaintiff-appellant has failed to lead any cogent and convincing evidence in order to prove that any fraud has been committed upon him by defendant No.1. In the absence of any such evidence, suit of the plaintiff-appellant has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, which may warrant interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

(RITU BAHRI)
JUDGE

04.12.2019
ajp