

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

**RSA No.3286 of 2016 (O&M)
Date of decision:18.01.2019**

Mewa Singh

... Appellant

Vs.

Deep Chand and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Dr. Surya Parkash, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present appeal is directed against the concurrent findings of facts and law, whereby, suit of the appellant-plaintiff laying challenge to the judgment and decree dated 14.6.1985, Ex.D5 and Ex.D6, has been dismissed by the trial Court and affirmed in appeal.

The plaintiff instituted the suit in the year 2004 and alleged that one Shingari was recorded as owner of the land measuring 167 kanals 3 marlas situated within the revenue estate of village Lohari, Tehsil and District Panipat. He was adopted by Shingari widow of Ran Singh as Ran Singh had no issue. After her death, mutation of inheritance bearing no.847 dated 07.05.1965 was sanctioned in favour of Mewa Singh by treating him

as her son, vide Ex.P1 and had become owner of the total land.

The defendants were having an evil eye on the land of the plaintiff and being ex-serviceman, plaintiff used to reside at Ahmedabad. After retirement, settled there in the year 1989 and used to occasionally visit village Lohari. Besides the total land of Shingari which came in the hands of the plaintiff, Mewa Singh, his brothers Rattan Singh, Dharam Singh and Kehar Singh had $\frac{1}{2}$ share and defendants other $\frac{1}{2}$ share in another land measuring 190 kanals 11 marlas situated within the revenue estate of village Lohari.

In the year 1985, plaintiff visited the village. Defendants approached the plaintiff with the request that they were unable to keep their ancestral land joint so the same may be got partitioned by mutual partition. In this way, plaintiff was under the belief that he has to appear in the Court to make a statement for partition of ancestral land and in this process, obtained signatures on two blank papers and one printed from on the seat of one lawyer, who was engaged by him. The aforesaid mis-representation came to know only on 03.06.2004 when he intended to take the loan about the aforementioned decree which was result of fraud and mis-representation and thus, cause of action accrued to file the suit.

The defendants opposed the suit being barred by law of limitation and non-payment of court fee. On merits, it was specifically pleaded that they were owners in possession by way of adverse possession because they were cultivating the land as owners since 1963.

Since the parties were at variance, the trial Court framed the following issues including the additional issue:

- “1. Whether the judgment/decreed dated 14.06.1985 passed by SJIC, Panipat in civil suit no.53 of 1985 titled as Deep Chand Vs. Mewa Singh is illegal, null, void, ineffective, inoperative and is not binding on the rights of the plaintiff having been obtained by fraud and mis-representation?OPP*
- 2. Whether the suit is not maintainable in the present form?OPD*
- 3. Whether the suit is not properly valued for the purposes of court fee and jurisdiction?OPD*
- 4. Whether the suit is time barred?OPD*
- 5. Relief.*

1-A Whether plaintiff is adopted son of Smt. Shingari?OPP “

The plaintiff in support of the averments examined Randhir Singh as PW1, Hari Chand as PW2, witnesses of the adoption, himself appeared as PW3 and Subhmal Singh as PW4 and brought on record the documentary evidence Ex.P1 to Ex.P10, mutation, jamabandi, copy of mortgage deed and canal khasra girdawari.

On the other hand, defendants examined Rati Ram as DW1, Jasbir Singh Rana as DW2 and Zile Singh as DW3 and brought on record the documentary evidence i.e. Ex.D1 to D11.

Dr. Surya Parkash, learned counsel appearing on behalf of the

appellant-plaintiff submitted that any decree obtained by fraud is vitiated in law and can be challenged, for, rigours of limitation would not apply. The defendants are none else but strangers, in other words, did not have any pre-existing right, therefore, decree requires registration under the Registration Act.

In support of the aforementioned contention, relied upon the judgment rendered by the Hon'ble Supreme Court in **Bhoop Singh Vs. Ram Singh Major 1995(3) RRR 541** and as well as in **Phool Patti and another vs. Ram Singh (dead) through LRs and another 2015(1) RCR (Civil) 606**. The suit was filed on 12.06.1985 resulted into decree of 14.06.1985 and therefore, in such circumstances, collusive decree was passed within two days.

The element of fraud and mis-representation cannot be ruled out. In support of aforementioned, relied upon the judgments rendered by the Hon'ble Supreme Court in **Ramesh Kumar and another Vs. Furu Ram and another 2011 (8) SCC 613** as well as in **Santosh Vs. Jagat Ram and another 2010(3) SCC 251**.

The property in dispute was mortgaged by the plaintiff on 26.4.1978 while taking the loan of Rs.40,000/- towards the tractor. The pleadings in the previous suit had been that the defendants were in possession, against the revenue record as canal khasra girdawari established the possession of the plaintiff. The provisions of Article 59 of Limitation Act, would apply and not of Article 58.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Dr. Surya Parkash.

Dr. Surya Parkash, learned counsel for the appellant during the course of arguments has shown the record of the case including the cross-examination of the plaintiff-Mewa Singh. In the opening line of cross-examination, he admitted that on account of his own volition, given possession of the suit property to the defendants for the purpose of cultivation and did not get any lagan or rent. It was also admitted that in the present suit, he did not establish that defendants had taken the possession of the suit property by force. The aforementioned admission belied the stand taken in the plaint that he did not have the knowledge of the possession as sought to be projected through the document of mortgage of April 1978.

On further perusal of the cross-examination, he admitted that he never stated in the plaint that since 1985, defendants had taken forcible possession of the suit land but the plaintiff miserably failed to prove the ingredients of fraud. The alleged accrual of cause of action of obtaining the revenue record in the month of June 2004 would not bring the case within the provisions of Article 59 of the Limitation Act, 1963 (hereinafter referred to as “1963 Act”) as plaintiff knew about possession of the defendants since long, as noticed above. In such circumstances, provisions of Article 58 of 1963 Act, would apply.

For the sake of brevity, both the provisions of Article 58 and 59 of 1963 Act, read as under:-

58. To obtain any other declaration	Three years	When the right to sue first accrues.
59. To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years.	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.”

It is a common practice amongst the litigants to take the benefit of provisions of Article 59 of 1963 Act by bringing the case within a period of limitation using guarded language but the same cannot be camouflaged as truth always surfaces while conducting cross-examination. The pleadings in the plaint of alleged cause of action and as well as the statement of having knowledge of the possession of the defendants since 1985, are totally opposite and contradictory to each other, thus, cannot be permitted to take the plea of non-registration of the decree as it was an apparently act of own volition.

The appeal is also accompanied by an application seeking condonation of delay of 41 days in filing the appeal. The explanation given in the application is bereft of the reasonable cause.

No ground for interference in the concurrent findings of fact and law is made out.

Resultantly, the regular second appeal is dismissed on merits as well as on limitation.

January 18, 2019
savita

Whether Speaking/Reasoned
Whether Reportable

(AMIT RAWAL)
JUDGE

Yes/No
Yes/No