

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

**RSA No.1110 of 2018 (O&M)
Date of Decision:14.01.2019**

Resham Singh

.....Appellant

Versus

Balkar Singh and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Vikram Singh, Advocate
for the appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated 15.01.2013, passed by the learned Additional Civil Judge (Sr. Division), Safidon, as well as judgment and decree dated 09.09.2017, passed by the learned Additional District Judge, Jind, whereby suit for declaration along with consequential relief of permanent injunction filed by the appellant-plaintiff has been dismissed.

Brief facts necessary for the adjudication of the case are that the plaintiff-appellant filed a suit seeking a declaration to the effect that he is the owner in joint possession of the suit property to the extent of 1/ 4th share i.e. half share of late Narain Singh of the land as described in the plaint. It was further prayed that judgment and decree dated 25.05.1994 titled as 'Balkar Singh etc., Vs. Narain Singh and release deed dated 25.09.2000 executed by defendant-respondent no.2 in favour of defendant-respondent no.1 and all subsequent revenue records on the basis of the same, are illegal, null, void and ineffective *qua* the rights of the plaintiff in respect to the disputed

property.

At the outset, it is necessary to note that the plaintiff-appellant-Resham Singh and respondent-defendant no.1-Balkar Singh are real brothers being sons of late Narain Singh. Defendant-respondent no.2, is the mother of the plaintiff-appellant-respondent no.1. Narain Singh had another son Gulab Singh, who is not a party to the present proceedings. Gulab Singh had died prior to the filing of the civil suit. His share had devolved upon respondent-defendant no.2. As per the pleadings in the plaint, it was averred that Narain Singh, father of the plaintiff and defendant no.1 along with Gulab Singh were owners in possession to the extent of half share in agricultural land as described in the plaint. Plaintiff, it was stated used to reside in District Pilibheet in Uttar Pradesh. Defendant no.1 and Gulab Singh (since deceased) in collusion with defendant no.2 played a fraud upon Narain Singh and managed to obtain a fraudulent and false decree dated 25.05.1994. Defendant no.1 and Gulab Singh got the property of Narain Singh transferred in their favour vide the said decree. Pursuant thereto mutation dated 30.05.1994 was sanctioned in their favour. Gulab Singh died on 17.09.1994 and defendant no.2 being mother of Gulab Singh inherited his estate as reflected in mutation dated 25.05.1994. Thereafter, a release deed dated 25.09.2000 was executed by defendant no.2 in favour of defendant no.1. Mutation dated 29.11.2000 was sanctioned in favour of defendant no.1. Plaintiff claimed to have approached defendant no.1 in December 2007 to demand the payment of Chakota. Defendant no.1 however claimed himself to be the exclusive owner in possession of the suit property and it is then that the plaintiff came to know about the fraudulent acts after inquiries. It was

pleaded that the said collusive decree and release deed are false and forged documents besides not being binding upon the rights of the plaintiffs. In any case, the suit property was joint Hindi Family Coparcenary property in the hands of Narain Singh and could not have been transferred in this manner. Hence the suit was filed.

Defendants resisted the suit while taking various preliminary objections. Averments on merits were denied. It was stated that an oral family settlement had taken place 14 years ago between the parties. Narain Singh and deceased-Gulab Singh were given the suit property while plaintiff was given his share in the form of cash, gold and silver ornaments. Plaintiff with his share purchased other properties in and around Kallector Ganj-Marori Tehsil Bishalpur, District Pili-Bheet (UP). It was denied that the suit property was ancestral joint Hindu Family property or that the impugned judgment and decree dated 25.05.1994 and release deed dated 25.09.2000 were illegal and void. Possession of the plaintiff over the suit land was denied. Defendants stated that earlier suit filed by the present plaintiff was dismissed on 13.02.1997. Application for restoration of the same was also dismissed as withdrawn on 19.11.1997. Therefore, the present suit was not maintainable. Dismissal thereof was prayed for.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for declaration as well as injunction, as prayed for?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPP
3. Whether the plaintiff has got no cause of action and locus standi to file the present suit?OPD
4. Whether the plaintiff has not come in the Court with clean hands?OPD

5. Whether the suit is hopelessly time barred?OPD
6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD
7. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances as well as evidence on record concluded that the plaintiff had failed to prove his case. Property in question was not proved to be ancestral Joint Hindu Family property of the parties. It was concluded to be the self acquired separate property of Narain Singh and he was thus fully entitled to transfer the same in favour of Balkar Singh and Gulab Singh. It was further observed by the learned trial Court that material fact of having filed the earlier Civil Suit no. 643 on 16.08.1994 was concealed by the plaintiff. He had knowledge of the decree way back in the year 1994, itself and there was no explanation for filing of the present suit in February 2008. Suit was accordingly dismissed.

Appeal preferred by the appellant-plaintiff was also dismissed by the learned Additional District Judge, Jind, on 09.09.2017.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant argues that the suit property has been proved to be ancestral property in the hands of his father Narain Singh. Therefore, it could not have been transferred by way of decree dated 25.05.1994 in favour of Balkar Singh and Gulab Singh. Furthermore, release deed dated 25.09.2000 (Ex.DW7/B) could not have been executed by Mahinder Kaur, mother of the appellant in favour of defendant no.1-Balkar

Singh. It is further submitted that both the learned Courts below have erred in concluding that dismissal of the earlier suit filed by the appellant for the same relief, which was dismissed in default, is an impediment or a bar to the filing of the present suit for the reason that there was no adjudication on the merits of the case in the earlier suit. It is thus prayed that the present appeal be allowed and the judgments and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the appellant-plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

In order to prove the ancestral nature of the property in question, appellant-plaintiff sought to rely upon the jamabandi for the year 1991-92, Ex.P-11. Learned counsel for the appellant is unable to deny that the said document does not in any manner prove the ancestral nature of the property in question. There is indeed no evidence on record to establish that the suit land in the hands of Narain Singh was ancestral property or that it was even received by Narain Singh from his predecessor-in-interest by way of inheritance. It is therefore rightly held by both the learned Courts below that the suit property was the self acquired separate property of Narain Singh. It is further not in dispute that by way of consent decree dated 25.05.1994, property in question was transferred by Narain Singh in favour of his two sons namely Balkar Singh and Gulab Singh. Date of death of Gulab Singh is 17.09.1994. The said consent decree was admittedly challenged by the present appellant by way of Civil Suit No. 643 of 1994, which was dismissed in default on 13.02.1997. Application for restoration of

the said civil suit was dismissed as withdrawn by the plaintiff on 19.11.1997.

Learned counsel for the appellant is unable to bring to notice of this Court the date of death of Narain Singh. Be that as it may, it is not in dispute that the present appellant did not take any steps whatsoever to challenge the decree dated 25.05.1994 till the filing of the present suit on 04.02.2008. Learned Additional District Judge, Jind, has rightly observed that non disclosure of the previous suit in his plaint, does lead to drawing of an adverse inference against the plaintiff-appellant.

Argument that Narain Singh had never appeared before the Court to suffer the decree dated 25.05.1994 does not hold any merit and is rejected. This is so for the reason that written statement on behalf of Narain Singh as well as the statement suffered by Narain Singh in the said suit has been duly proved by Mr. M.P.Jain, Advocate. It is further admitted that the decree in question was never challenged by Narain Singh during his life time. As noticed above, date of death of Narain Singh is not forthcoming. Respondent no.2-Mahinder Kaur, being mother of Gulab Singh succeeded to the estate of Gulab Singh after his death in 1994. Release deed dated 25.09.2000 was executed by her in favour of respondent no.1-Balkar Singh. She was well within her right to have executed the said release deed which is a registered document and duly proved on record.

Learned counsel for the appellant is unable to point out any evidence on record to indicate that the said decree dated 25.05.1994 and release deed dated 25.09.2000 are forged, fabricated or fraudulent documents. There is no such evidence on record. Therefore, even if

contentions of learned counsel for the appellant are accepted to the extent, that when a matter has not been adjudicated on merits, a subsequent suit may not be barred by the principle of *res judicata*, the facts and circumstances of the case do not permit of any other decision as has been rendered by both the learned Courts below. It is admitted by the appellant that he had been residing at Pilibheet in Uttar Pradesh for a number of years.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decrees dated 15.01.2013 and 09.09.2017 passed by the learned Additional Civil Judge (Sr. Division) Safidon and learned Additional District Judge, Jind, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

14.01.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.