

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

RSA No.1665 of 2018 (O&M)

Date of decision: 01.05.2019

Gurdial Singh (deceased) thr his LRs etc.

... Appellants

Versus

Sohan Singh (deceased) thr his LRs etc.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Dr. Surya Parkash, Advocate
for the appellants.

Mr. Tarunveer Vashisht, Advocate
for the caveators-respondents.

REKHA MITTAL, J.

CM No.7215-C of 2018

Heard.

Allowed as prayed for. Annexures A1 to A5 are taken on
record, subject to just exceptions.

Disposed of accordingly.

CM No.11282-C-2018

Heard.

Allowed as prayed for. Annexures R1 and R2 are taken on
record, subject to just exceptions.

Disposed of accordingly.

Main Case

Challenge in the present appeal has been directed against the

judgment and decree dated 29.01.2018 passed by the Additional District Judge, Ambala whereby appeal against the judgment and decree dated 29.01.1994 passed by the Additional Senior Sub Judge, Ambala (hereinafter referred to as the trial Court) dismissing suit of the respondents/plaintiffs, was allowed, the impugned judgment and decree were set aside and the defendants (appellants herein) were directed to handover vacant possession of suit land to the respondents/plaintiffs within two months from the date of judgment.

The facts extracted from judgment of the Appellate Court are that as per case of the respondents/plaintiffs, Smt. Gulab Kaur, mother in law of plaintiffs was owner of suit land. She executed Will dated 01.03.1966 in favour of the respondents/plaintiffs. After death of Smt. Gulab Kaur on 11.06.1966, plaintiffs became owners of the suit property. One Jeet Singh filed Civil Suit No.684 of 1943 titled 'Jeet Singh VS. Gulab Kaur' in which a compromise took place between them on 10.06.1944 vide which Jeet Singh @ Mihan Singh was held entitle to use property during his lifetime and thereafter it was to revert back to Smt. Gulab Kaur, if alive or to devolve upon her heirs. Jeet Singh @ Mihan Singh pre-deceased Smt. Gulab Kaur and suit land came to her on the basis of compromise dated 10.06.1944. It is further pleaded that another suit titled 'Sadhu Singh etc. VS. Gurdial Singh etc.' was decided on 19.03.1982 and findings would operate as res judicata between the parties and binding upon them. The defendants illegally entered into possession of suit land and had started

claiming that they are in adverse possession of the same for the last more than three years. Hence the suit.

The defendants filed written statement seriously resisting claim of the respondents/plaintiffs. It was submitted that one Kehar Singh son of Begail Singh resident of village Adomajra was the last male holder. After his death, suit property was mutated in the name of his widow Smt. Ram Piari. On death of Smt. Ram Piari, mutation of inheritance was wrongly sanctioned in favour of Smt. Gulab Kaur who was not related to Sh. Kehar Singh. The relationship between Bachan Kaur, Smt. Gulab Kaur and her two daughters Jasmer Kaur and Jasminder Kaur was denied. It is further denied that Jasmer Kaur and Jasminder Kaur and plaintiffs ever served Smt. Gulab Kaur and Smt. Gulab Kaur executed Will dated 01.03.1966 in favour of the plaintiffs. The plaintiffs have no concern with the suit land and answering defendants are owners in possession of the same. It is admitted that there was litigation between Smt. Gulab Kaur and Mihan Singh and the matter had been compromised and under the said compromise, Smt. Gulab Kaur admitted that Sh. Mihan Singh was the heir of Sh. Kehar Singh and that she had nothing to do with the suit land. It is further averred that defendants are in possession of the suit land as complete masters for the past more than 12 years and have acquired title over the same. The interest of plaintiffs or their predecessors, if any, stood extinguished by virtue of Section 27 of the Limitation Act, 1963. Denying all other material averments, defendants prayed for dismissal of the suit.

The plaintiffs filed replication and reasserted their stand taken in the plaint and controverted the defence plea(s) raised by the defendants.

The trial Court framed the following issues:-

1. Whether Smt. Gulab Kaur was the owner of the suit property ? OPP
2. Whether Smt. Gulab Kaur was the mother of Smt. Jasmer Kaur @ Shero wife of plaintiff no.1 and Smt. Joginder Kaur @ Jagindro wife of plaintiff no.2? OPP
3. Whether Smt. Gulab Kaur executed a valid will dated 01.03.1966 in favour of plaintiffs regarding the suit property, if so to what effect ? OPP
4. Whether Jasmer Kaur @ Shero and Joginder Kaur @ Jagindro were the only heirs of Smt. Gulab Kaur, if so to what effect ?OPP
5. Whether Jit Singh alias Mihan Singh had given property in suit to Smt. Gulab Kaur as alleged in para no.6 & 7 of the plaint ? OPP
6. Whether Smt. Gulab Kaur was an heir to Mihan Singh ? OPP
7. Whether the agreement alleged to have been executed on 10.06.1944 amounted to a Will as alleged in para no.7 of the plaint ? OPP
8. Whether the suit is not within time ? OPP
9. Whether the defendants have become owners of the property in suit by adverse possession and the rights/remedy of the plaintiff, if any, stand extinguished ? OPD
10. Whether the defendants and Jit Singh alias Mihan Singh deceased are related to each other in the manner, as given in para no.12 of the additional pleas of the written statement ? OPD
11. Whether the defendants are heirs of Jit Singh alias Mihan Singhas alleged, if so to what effect ? OPD

12. Whether the compromise set up by the plaintiffs between Gulab Kaur and Jit Singh alias Mihan Singh is illegal and void. If so what is its effect ? OPD

13. Relief

The parties produced evidence in support of their respective claims. Having heard counsel for the parties in the light of materials on record, the trial Court answered issues No.1, 5 to 7 against the respondents/plaintiffs, issues No.8 and 9 in favour of defendants and eventually, suit of the plaintiffs was dismissed with costs.

As has been noticed hereinbefore, the appeal preferred by the respondents/plaintiffs was allowed by the First Appellate Court and suit filed by the respondents/plaintiffs was decreed in the terms indicated hereinbefore.

Counsel for the appellants would argue that suit land was originally owned by Sh. Kehar Singh and inherited by his widow Smt. Ram Piari. It is argued that there is no evidence adduced by the respondents/plaintiffs as to how Smt. Gulab Kaur was related to Sh. Kehar Singh or Smt. Ram Piari or the basis on which Smt. Gulab Kaur could claim to be owner of suit land in regard whereof the respondents/plaintiffs have staked their claim on the basis of testamentary succession in view of Will dated 01.03.1966 purported to be executed by Smt. Gulab Kaur in favour of the plaintiffs who are the husbands of daughters of said Gulab Kaur. It is further argued that decree dated 10.06.1944 passed in Civil Suit titled 'Jeet Singh @ Mihan Singh VS. Mst. Gulab Kaur' on the basis of

compromise is not sufficient to create right of heirship/ownership upon Smt. Gulab Kaur more particularly in the circumstances that there is no evidence on record as to how Jeet Singh @ Mihan Singh was related to Sh. Kehar Singh or Smt. Ram Piari.

Another submission made by counsel is that decree dated 10.06.1944 is the result of fraud played upon the Court, therefore, the said decree is liable to be ignored for the purpose of present controversy. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **SP Chengalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LRs and others, 1994(1) Supreme Court cases 1, Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari and another, 2014 (1) RCR (Civil) 935.**

Counsel representing the respondents/plaintiffs has supported judgment and decree passed by the Court in appeal. It is argued with vehemence that in the litigation initiated by Sadhu Singh and another, Civil Suit No.101 of 1970 decided on 19.03.1982, the plaintiffs and defendants were impleaded as parties on the array of defendants. It is further argued that in the said case, the Court framed issue with regard to relationship of defendants of the present suit with Sh. Kehar Singh and Jeet Singh but the same was answered against the defendants/appellants. The Court also framed issues with regard to plaintiffs (defendants No.5 and 6 therein) to be cognates of Kehar Singh and the said issue (issue No.6) was answered in favour of defendants No.3 to 6 therein and findings on that issue have

attained finality between the parties upto Hon'ble the Supreme Court. It is further argued that the defendants in the present litigation filed RSA No.691 of 1985 arising out of Civil Suit No.101 of 1970 and the second appeal was dismissed by this Court vide judgment dated 12.08.2010 Annexure R1 whereby the other two regular second appeals No.352 and 505 of 1985 were also decided. Counsel would inform that the decision dated 12.08.2010 of this Court was challenged by Jasinder Singh and others (appellants herein) before Hon'ble the Supreme Court in Petition for Special Leave to Appeal (c) No(s). 9778/2011 and the same was dismissed on 25.07.2016. It is vehemently argued that in view of decision in the litigation initiated by Sadhu Singh and another, it is not open for the appellants to contend that the respondents/plaintiffs were obligated to prove their relationship with Smt. Ram Piari or with Sh. Kehar Singh or findings recorded by the Appellate Court suffer from an error much less perversity.

With regard to contention of the appellants that the judgment and decree dated 10.06.1944 are the result of fraud and can be challenged in collateral proceedings, it is argued that appellants never raised any such plea either in the previous litigation or in the present suit, therefore, they can neither be permitted to raise a factual plea for the first time in second appeal nor can derive any aid to their contention from the referred authorities.

Counsel for the appellants, in reply, would argue that in the

suit filed by Sadhu Singh and another, Gurdial Singh and Jagir Singh son of Gurdial Singh represented by the appellants herein were co-defendants of Sohan Singh and Gurnam Singh (plaintiffs herein) and there was no contest inter se the defendants in the said litigation as defendants No.5 and 6 therein (plaintiffs herein) did not file a counter claim seeking possession of suit land from the defendants herein and as such, there was no occasion for the defendants herein to contest plea of the plaintiffs herein with regard to their relationship with Kehar Singh and as such, the respondents cannot derive any advantage to their contention from the judgment passed in **Sadhu Singh and another's case (supra)** decided upto Hon'ble the Supreme Court. In addition, it is argued that since Sohan Singh and Gurnam Singh did not file a counter claim in the suit filed by Sadhu Singh and another claiming possession of suit land from the defendants herein, they cannot maintain the present suit for possession of land.

I have heard counsel for the parties, perused the paper book and various annexures placed on record.

Be that as it may, it is undisputed position of the case that till date, Gurdial Singh and Jagir Singh defendants never challenged the judgment and decree dated 10.06.1944 on any score, whatever. Even in the present case, the defendants did not dispute the judgment and decree dated 10.06.1944 much less to lay a factual foundation that the same is vitiated being the result of fraud and the said fact can be examined in collateral proceeding as well. As per the settled position in law, to challenge a deed

on the ground of fraud, the party concerned is required to plead essential ingredients constituting fraud in compliance with the provisions of CPC and thereafter to prove the same akin to a criminal charge. As has been rightly argued by counsel for the respondents, in absence of raising any such plea in the written statement or pressing such an issue before the Courts, the appellants cannot be permitted to raise such a factual plea in the second appeal. It appears that since the appellants despite contesting the previous litigation upto Hon'ble the Supreme Court failed to get any relief, out of frustration, they have sought to raise such a plea for the first time in second appeal. The contention raised by counsel for the appellants in this regard is patently misconceived and rejected. In this view of the matter, the appellants cannot derive any advantage to their contention from the referred authorities.

Much stress has been laid by counsel for the appellants that the respondents/plaintiffs have not proved their relationship with Sh. Kehar Singh or Smt. Ram Piari, erstwhile owners of the suit land. There is no denial that in suit for possession filed by Sadhu Singh and Smt. Bant Kaur, Civil Suit No.101 of 1970 decided on 19.03.1982, the plaintiffs and defendants of the present litigation were impleaded as parties on the array of defendants. It is also not disputed that in the said litigation, land subject matter of the present suit was in controversy between the parties. In the suit, the Court framed issues reproduced in para 4 of the judgment of First Appellate Court, Civil Appeal No.105/13 of 1982 decided on 24.09.1984

titled 'Sadhu Singh and another Vs. Gurdial Singh and others'. The material issues, relevant in the context of present case, read as follows:-

III) Whether defendants No.1 and 2 are collaterally relate to Kehar Singh deceased. If so, at what degree and are entitled to the property in dispute left by Jeet Singh @ Mihan Singh and if so to what effect? OPD 1 and 2.

V) Whether defendants No.3 and 6 cognates of as alleged and are the heirs and entitled to the property in dispute? OPD 3 to 6.

VI) Whether defendants No.3 to 6 cognates of Kehar Singh. If so, to what effect? OPD 3 to 6.

The trial Court, vide judgment and decree dated 19.03.1982, decided issue No.3 against defendants No.1 and 2 therein and appellants/defendants herein, issues No.5 and 6 taken up jointly with issue No.7 were decided in favour of defendants No.3 to 6 therein including plaintiffs No.1 and 2 in the present suit. Suit filed by Sadhu Singh and another was dismissed by the trial Court. Sadhu Singh and another filed appeal that came to be decided by Additional District Judge, Ambala on 24.09.1984 (Annexure A4). The defendants in the present case did not file any cross objections to assail findings of the trial Court on issue No.3 decided against them and issues No.5 and 6 decided in favour of defendants No.3 to 6 therein including plaintiffs of the present case. The Appellate Court held that issues No.2 and 4 have not been proved by defendants/respondents and modified findings of the trial Judge on issues No.5 to 7 to the extent that though Gulab Kaur executed the Will in favour of respondents No.5 and 6 and respondents No.3 to 6 are related to her as

alleged yet does not entitle to them to inherit property in dispute.

The judgment and decree dated 24.09.1984 led to filing of three appeals, RSA No.352 of 1985 preferred by defendants Jasmer Kaur and others, RSA No.505 of 1985 filed by Sadhu Singh through LRs and others and RSA No.691 of 1985 filed by Gurdial Singh through LRs and others. The appeal preferred by Sadhu Singh and others and so also RSA No.691 of 1985 by Gurdial Singh and others were dismissed. This Court affirmed findings on issue No.3 with regard to relationship of Gurdial Singh and Jagir Singh with Kehar Singh (deceased) and their entitlement to property in dispute left by Jeet Singh @ Mihan Singh. However, the appeal preferred by Jasmer Kaur and others namely RSA No.352 of 1985 was allowed and findings of the trial Court on issues No.3, 5 and 6 were answered in favour of defendants No.3 to 6 therein including the present plaintiffs. There is no dispute that Jasminder Singh, one of the appellants being legal representative of Guridal Singh and others filed Special Leave to Appeal against the judgment dated 12.08.2010 passed by this Court and the same was dismissed on 25.07.2016 and as such, findings of this Court on issues No.3, 5 and 6 answered in favour of defendants No.3 to 6 therein attained finality between the parties and as such, the same would constitute res judicata in the present proceedings, as has been rightly so held by the Appellate Court. As the plaintiffs being defendants No.5 and 6 in the earlier litigation were held to be cognates of Kehar Singh, it is not open for the appellants to contend that they were required to prove their relationship

with Kehar Singh afresh in the present suit or for that reason findings of the First Appellate Court cannot be allowed to sustain.

Counsel for the appellants has made a vain attempt to argue that as Gurdial Singh and Jagir Singh through whom the appellants claim right in the suit property were co-defendants of Sohan Singh and Jagir Singh plaintiffs herein, they (appellants) could not contest their claim with regard to their relationship with Kehar Singh. This contention is neither tenable in law nor can be accepted. The findings in a civil suit would constitute res judicata even inter se the co-defendants. The defendants did not file any cross objections in the appeal preferred by Sadhu Singh and another against the judgment and decree dated 19.03.1982. The regular second appeal filed by them did not find favour with this Court. The findings of the trial Court on issues No.3, 5 and 6 have been affirmed by this Court while deciding RSA No.352 of 1985, therefore, the appellants cannot be permitted to agitate that the respondents/plaintiffs have failed to prove their relationship with Kehar Singh, thus, they are not entitle to recover possession of suit land.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs, in limine.

01.05.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No