

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

RSA No. 2189 of 2018 (O&M)
Date of decision: 29.1.2019

Suraj Bhan and others

...Appellants

Versus

Smt. Mukti Devi

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rajesh Lamba, Advocate,
for the appellants.

JAISHREE THAKUR, J.

CM No. 5961 CI of 2018

This is an application that has been filed for condonation of 61 days' delay in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay in filing the appeal is condoned.

CM stands disposed of.

Main case

The instant Regular Second Appeal has been filed by the appellants against the judgment and decree dated 17.11.2016 passed by the Additional District Judge, Faridabad, vide which the judgment and decree dated 26.8.2015 passed by the trial court was set aside and the civil suit filed by the plaintiff/respondent herein has been decreed.

The facts in brief are that the plaintiff/respondent herein

(hereinafter referred to as '**the plaintiff**') filed a suit seeking declaration to the effect that the award dated 10.8.2002 passed in Civil Suit No. 228 dated 4.5.2002 titled as Suraj Bhan Vs. Smt. Mukti Devi and the subsequent mutation 6633 dated 8.11.2002 are illegal, null and void and further that the subsequent mutation 10141 dated 7.12.2010 and 10699 dated 1.1.2011 executed by defendant 1 (since deceased), appellant 1 herein in favour of defendants 2 and 3/appellants 2 and 3 herein are also illegal, null and void as they are based on fraud, misrepresentation and cheating.

It was averred in the plaint that the plaintiff/respondent herein is the owner and in possession over the suit property mentioned in para 1 of the plaint, vide registered sale deed 2252 dated 30.6.1978. The plaintiff was married to one Saroop Singh and out of the said wedlock nine children, including defendant No.1 was born. The husband of the plaintiff had purchased the suit property out of the joint family funds in her name. The plaintiff, along with her sons, namely Laxman and Madan Lal as well as defendants No.1 and 2 were also residing in the suit property, constructed by the joint family funds, whereas defendant No.3 has already got married. In the month of April, 2012, the plaintiff came to know about the fraud and cheating that defendant No.1 has obtained a collusive decree dated 10.8.2002 by filing civil suit 228 dated 4.5.2002 and thereafter illegally transferred the ownership in favour of defendants 2 and 3 i.e. son and daughter respectively of defendant No.1. It was alleged that in the aforesaid suit, the defendant No.1 did not implead other family members who are the sons and daughters of the plaintiff, which fact itself shows his illegal intention.

The appellants/defendants contested the suit by filing written statement. It was averred that defendant No. 1 got his title over the suit property by way of decree in the civil suit and thereafter mutation 6633 was also got sanctioned in favour of defendant No.1. It is only thereafter defendant No. 1 executed the sale deed in favour of defendants No. 2 and 3. It was pleaded that since the suit property is the self acquired property of the plaintiff and she herself had voluntarily relinquished her right, title before the court, no case is made out.

From the pleadings of the parties, the trial court framed as many as six issues. In support of her case, the plaintiff examined herself as PW1 and also produced PW2 Satparkash Mittal and PW3 Radhey Lal and also tendered Ex. P.1 to P.39 in evidence.

On the other hand, defendant No. 3 examined herself as DW1 and also tendered her affidavit Ex. DW1/A and document Ex. D.1 i.e. copy of the sale deed.

After going through the evidence led by the respective parties, the trial court dismissed the civil suit holding that the plaintiff was not able to prove the fact that the son of the plaintiff played a fraud upon her and got the suit decreed in his favour after getting admission from the plaintiff relinquishing her right in favour of the plaintiff. On appeal, the first appellate Court, as already noticed, decreed the suit of the plaintiff, giving rise to the present appeal.

Learned counsel for the appellants submits that the suit property was self acquired property of the plaintiff and she herself had voluntarily relinquished her right, title in the property in favour of defendant

1 before the court and thus, civil suit 228 dated 4.5.2002 filed by him came to be decreed and subsequently mutation was sanctioned in favour of defendant No.1, who later on executed a sale deed 10141 dated 7.12.2010 in favour of defendant 2 and 3, who are his son and daughter respectively. It is further submitted that no fraud at all as alleged was played by defendant No. 1 upon the plaintiff.

I have heard learned counsel for the appellants and perused the impugned judgment and decree.

The sole question that arises for consideration in the present appeal is, whether the plaintiff had voluntarily suffered a statement before trial court when the civil suit 228 dated 4.5.2002 titled Suraj Bhan Vs. Smt. Mukti Devi was decreed or a fraud was played upon her by her own son, as the plaintiff pleaded that defendant No. 1 (son of the plaintiff), had betrayed her faith by misrepresenting the plaintiff using her thumb impression was required for execution of a power of attorney.

It is apparent from the record that other children of the plaintiff —Mukti Devi were not impleaded as necessary party nor defendant No. 1 had impleaded his brothers Laxman & Madan Lal, who were residing in one portion of the suit property, which creates a doubt on the alleged family settlement. From the evidence it is evident that Laxman and Madan Lal were residing in one portion of the suit property since long, so the question of alienating the house by the plaintiff in favour of only one son i.e. Suraj Bhan (defendant No.1) does not arise. No cogent explanation is forthcoming as to why the plaintiff would transfer the suit property in favour of only one son ignoring her six other sons and two daughters. By

no stretch of an imagination, a mother would transfer or relinquish her right in a property in favour of only one son, ignoring her other children, particularly when there is no evidence coming forth on the record for taking such decision. A reading of the statement made by the plaintiff—Mukti Devi, who is an illiterate woman, before the trial court, when the consent decree was passed, does not inspire confidence. Furthermore, the action of Suraj Bhan further transferring the property in favour of his children in order to defeat the claim of his siblings is also suspicious. It has also rightly been noticed that consent decree had not been registered under Section 17 (1) (a) and 17 (2) (vi) of the Registration Act, 1908, in terms of the Supreme Court judgments in the cases of **Phool Patti Vs. Ram Singh 2015 (1) RCR (Civil) 606** and **Bhoop Singh Versus Ram Singh AIR 1996 SC 196**. Therefore, there is no doubt that defendant No. 1 played a fraud upon his own mother so as to secure the suit property in his favour. Defendant No. 1 obtained the thumb impression on the pretext of execution of a power of attorney but misused the same for obtaining a collusive decree.

The judgment of the first appellate court is well considered. No question of law, much less substantial question of law arises for consideration in the present appeal. Dismissed.

29.1.2019

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No