

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

RSA-4589-2017(O&M)

Date of decision:-29.8.2019

Satbir

...Appellant

Versus

Rattan Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.A.K. Singhal, Advocate
for the appellant.

Mr.Sandeep Verma, Advocate
for the respondents.

H.S. MADAAN, J.

Though today the case is fixed for orders, however,
Sh.Sandeep Verma, Advocate – counsel for respondents has put in
appearance and requested for permission to address arguments on
behalf of the respondents.

Allowed.

Arguments advanced by learned counsel for the
respondents have been heard.

Briefly stated, facts of the case are that plaintiff Satbir son of Sh.Mamu son of Sh.Baldev, resident of village Bhandari, Tehsil and District Panipat had brought a suit against his real brothers i.e. S/Sh.Rattan Singh, Kanwar Bhan, Hukam Singh arrayed as defendants No.1 to 3, his sister Smt.Rati defendant No.4, widows of his deceased brothers defendants No.5 to 9, his nephews defendants No.6, 12 and 14 and nieces arrayed as defendants No.7, 8, 10, 11 and 13 seeking a declaration that he is owner in possession of the land measuring 43 kanals 0 marla being 2/7 share of land measuring 150 kanals 10 marlas, fully detailed in head-note of the plaint situated at village Bhandari, Sub Tehsil Madlauda, District Panipat as per jamabandi for the year 2000-01 and that mutation No.2555 is illegal, null and void, ineffective qua his rights. He further sought a consequential relief of permanent injunction restraining defendants No.1 to 3 from interfering in his peaceful possession over the suit land.

According to the plaintiff his father Sh.Mamu was owner in possession of land measuring 150 kanals 10 marlas situated at village Bhandari, Tehsil and District Panipat having inherited the same from his forefathers and plaintiff; defendants No.1 to 3 and Sh.Dharam Pal predecessors-in-interest of defendants No.5 to 8 besides Sh.Prem Singh predecessor-in-interest of defendants No.9 to 14 were having 1/7 share each, whereas remaining 1/7 share

belonged to Sh.Mamu; that sons of Sh.Mamu except the plaintiff had separated from him for the last about 14-15 years and thereafter Sh.Mamu had been residing with the plaintiff; that he (Mamu) had died in August, 2008; that the plaintiff has been in cultivating possession of 43 kanals 0 marla being 2/7 share of total land measuring 150 kanals 10 marlas since the year 2001 well within the knowledge of the defendants, who never raised any objection to the same; that the plaintiff had filed a civil suit for declaration bearing No.499 of 2008 instituted on 14.2.2008 to the effect that he was owner in possession of 1/7 share of the land out of total land measuring 150 kanals 10 marlas, in addition to his own 1/7 share of the land; that his father had appeared in the said case and filed written statement, thereafter, he suffered a statement in the Court admitting the claim of the plaintiff; that an Award on the basis of family settlement in that Civil Suit No.499 of 2008 was passed in favour of the present plaintiff on 19.12.2008 by the then learned Additional Civil Judge (Sr.Divn.), Panipat, resultantly the plaintiff became owner in possession of the land measuring 43 kanals 0 marla i.e. 2/7 share of the total land measuring 150 kanals 10 marlas; that the plaintiff had approached Halqa Patwari along with the certified copy of the award requesting him to enter the mutation in his name on the basis of award but the Halqa Patwari put off the matter on one pretext or the other and ultimately refused to do so; that the plaintiff

moved an application on that very day i.e. 3.3.2009 to Naib Tehsildar, Madlauda, District Panipat, then Halqa Patwari reported that mutation No.2555 regarding estate of Sh.Mamu had been entered in the revenue record on the basis of natural succession. According to the plaintiff, the defendants in collusion with Naib Tehsildar, Madluada had procured mutation in question; that on 3.5.2009, defendants No.1 to 3 along with their supporters came to the suit property and tried to interfere in peaceful possession of the plaintiff, not listening to his request to desist from doing so. Feeling aggrieved, the plaintiff had brought the suit in question.

On notice the defendants appeared and filed written statement contesting the suit raking up various preliminary objections contending that the suit was not maintainable; that no cause of action arose to the plaintiff to file the suit; that the plaintiff was estopped by his own act and conduct from filing the suit; that the plaintiff had concealed the true and material facts from the Court etc. According to the answering defendants, all the six sons of Sh.Mamu, namely, S/Sh.Rattan Singh, Kanwar Bhan, Satbir, Dharam Pal, Hukam Chand and Prem Singh had filed Civil Suit No.686 of 1990 against Sh.Mamu titled as “Rattan Singh and others Vs. Mamu” which was decreed by the court of the then Addl. Senior Sub Judge, Panipat, vide judgment and decree dated 12.06.1990; that at that time, Mamu was desirous of relinquishing his 1/7 share of the land in favour of

his sons, but Rattan Singh, the elder son of Mamu, prevailed upon him to retain his 1/7 share in the land so as to have source of income to meet living expenses and it was agreed at that time in the year 1990 that till Mamu was alive, he would retain his 1/7 share in the land and after his death, his 1/7 share would be inherited by all the legal heirs; that after death of Sh.Mamu on 8.8.2008, the plaintiff and all the defendants are cultivating the land in equal shares being legal heirs and successors-in-interest of Sh.Mamu – deceased; that they had sown crop of Jawar in the fields, which were in their share after reaping the wheat crop; that the plaintiff was not in cultivating physical possession of entire land area measuring 21 kanals 10 marlas, which was the 1/7 share of Sh.Mamu out of the total land measuring 150 kanal 10 marla; that the Award dated 19.12.2008, passed by the court of learned Addl. Civil Judge (Senior Division), Panipat in Civil Suit No.499 of 2008 titled as “Satbir vs. Mamu” is illegal, null and void, arbitrary without jurisdiction and the result of fraud played by the plaintiff Satbir with the defendants and as well as with the court; that no Award can be legally passed against a dead person; that Mamu had died on 08.08.2008 at village Bhandari and the Award had been passed on 19.12.2008; that the plaintiff Satbir had not informed the court after 08.08.2008 regarding the death of his father Mamu, in that way he failed to discharge his legal and moral duty to inform the Court about death of his father; that Mamu

had remained seriously ill for more than one year prior to his death and he had lost his eye-sight and memory for the last more than two years before his death and he was unable to move even and his mental faculties had got deteriorated and he left eating food a year prior to his death; that as a matter of fact on 02.05.2008, Mamu had not appeared in the court of Addl. Civil Judge (Senior Division), Panipat and had not got recorded any statement admitting the claim of the plaintiff in the court on 02.05.2008; that some other person had been produced in the Court by plaintiff Satbir and he had played fraud with the Court. According to the defendants, Sh.Mamu was residing with all his sons including the defendants for a few months turn-wise and all of them were looking after and serving him; that plaintiff Satbir was also present before the A.C. IInd Grade, Madlauda, when the mutation was sanctioned and he did not disclose the fact of having procured any decree from the Civil Court; that the defendants came to know regarding the filing of Civil Suit no.499 of 2008 only on 12.05.2009, when the plaintiff in the village showed the photocopy of award dated 19.12.2008 to Hukam Chand - defendant no.3, in that way the award dated 19.12.2008 is illegal, null and void and passed against a dead person, therefore, it is not binding upon the rights of defendants and the same is liable to set aside. Refuting the remaining allegations in the plaint, the defendants prayed for dismissal of the suit.

The defendants had filed a counter-claim seeking a declaration that award dated 19.12.2008 is null and void.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint praying for decreeing of the suit and dismissal of the counter-claim brought by the defendants.

On the pleadings of the parties, following issues were framed:

1. Whether plaintiff is entitled to relief of declaration, as prayed for? OPP.
2. Whether the plaintiff is entitled to relief of permanent injunction, as prayed for? OPP
3. Whether the defendants are entitled to relief of declaration to the effect that the award dated 19.12.2008 is null and void? OPD.
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD.
6. Whether the plaintiff has concealed the true and material facts from the Court? If so, its effect? OPD.
7. Relief.

In order to prove his case, the plaintiff got his statement recorded as PW3 besides examining Sh.Rama, Record-Keeper,

Judicial Record Room, Panipat as PW1, SI Ramesh Chander, Food and Supply Department, Madlauda as PW2 and Sh.Yashpal Chand Jain, Handwriting and Fingerprint Expert as PW4 and tendered into evidence certain documents.

On the other hand, the defendants had examined Sh.Hukam Chand as DW1 and the defendants tendered into evidence attested copy of order dated 12.4.2013 as Ex.D1.

After hearing learned counsel for the parties, the trial Court decided issues No.1 and 2 against the plaintiff, issue No.3 in favour of defendants and issues No.4 to 6 against the defendants. Resultantly, suit of the plaintiff was dismissed, whereas counter-claim filed by the defendants was allowed. This was so done vide judgment and decree dated 23.12.2014

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Panipat which was assigned to Additional District Judge, Panipat who vide judgment and decree dated 29.4.2017 dismissed the same.

Not satisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and his suit be decreed, whereas counter-claim of the defendants be dismissed.

On getting notice of regular second appeal, the respondents have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the judgments and decrees passed by the Courts below are not sustainable and are bound to be set aside.

In this case the parties are not at variance with regard to the fact that Sh.Mamu was earlier owner of the suit land measuring 150 kanals 10 marlas situated at village Bhandari. The relationship *inter se* between the parties and with Sh.Mamu is also not disputed. The death of Sh.Mamu on 8.8.2008 is also admitted. The parties do not dispute that six sons of Sh.Mamu, namely, Rattan Singh, Kanwar Bhan, Satbir, Dharampal, Hukam Chand and Prem Singh had filed a Civil Suit No.686 of 1990 against Sh.Mamu, which was decreed by the Court of the then Adl. Senior Sub Judge, Panipat vide judgment and decree dated 12.6.1990, resultantly all six sons of Sh.Mamu acquired 1/7 share each in that land and Sh.Mamu was left with 1/7 share in the said land. The dispute between the parties is with regard to 1/7 share in the land, which Sh.Mamu was left with after suffering a consent decree in favour of his sons. As per version of the plaintiff, Sh.Mamu had suffered a decree in his favour by filing written statement admitting his claim and making statement in the Court in civil suit filed by the present plaintiff against Sh.Mamu bearing

No.499 of 2009 and an Award in that regard was passed on dated 19.12.2008 vide which 1/7 share in the suit land of Sh.Mamu stood transferred to the plaintiff. Whereas the defendants have denied this fact contending that Sh.Mamu had died on 8.8.2008 and award was passed on 19.12.2008; that the plaintiff Satbir did not inform the Court regarding death of Sh.Mamu and procured an award against a dead man by concealing facts, therefore, the award is illegal and ineffective. The Courts below have agreed with the defendants in that regard. However, the Courts below have certainly fell in error in doing so. Though Order 22 Rule 4 CPC has been referred to but the legal position has not been appreciated properly. In terms of Order 22 Rule 3 CPC, which has been taken note of by the Courts below where within time limit by law, no application is made under Sub Rule (1), the suit shall not abate as against the deceased defendant and the judgment be pronounced notwithstanding the death and it shall have the same force and effect, if it had been pronounced before the death took place. Therefore, it is not proper to condemn the award for the reason that it had been passed after death of Sh.Mamu. The Courts could legally do so in terms of Order 22 Rule 3 CPC. Even otherwise, as per amendment by this Court in Order 22 Rule 4 CPC, a duty is cast upon the legal representatives of deceased plaintiff or defendant to approach the Court requesting for being impleaded in place of deceased party. Here none of the defendants is

shown to have approached the trial Court in that regard. Though the defendants have come up with a plea that Sh.Mamu had not filed any written statement in that civil suit admitting claim of the plaintiff and had not got his statement recorded in the Court in that regard and further he was not having sound mental faculties for some time before his death but they have not been able to show that the decree was obtained by plaintiff by practising fraud or making misrepresentation or by way of impersonation. The judgment and decree were wrongly set aside by the Court below by accepting the counter-claim. The reasoning given by the trial Court was that it was incumbent upon the plaintiff to prove by leading cogent evidence that Sh.Mamu had appeared before the Court and made a statement and the counsel, who had identified Sh.Mamu had not been examined by the plaintiff, therefore, the award dated 19.12.2008 was set aside. This approach by the Courts below to say the least was erroneous. The plaintiff had come up with a judgment and decree in his favour passed by the Court of competent jurisdiction. It were the defendants, who had challenged its legality and validity and onus was upon them to prove that those are illegal and invalid for the reason that in fact Sh.Mamu had not appeared in the Court and had not filed written statement admitting claim of the plaintiff and had not got statement recorded conceding claim of the plaintiff and that some impersonator had done so. The onus could not be shifted upon the plaintiff in that

way. The law is well settled that a litigant, who alleges a fact is required to prove that and negative onus cannot be placed upon the opposite party. Admittedly, till date, the defendants had not taken any step to approach the Court, which had passed the decree to set it aside. Under Order 22 Rule 4 CPC, if a decree has been passed against the deceased – defendant, a person claiming to be his legal representative may apply for setting aside the decree qua him and if it is proved that he was not aware of the suit or that he had not intentionally failed to make an application to bring himself on record, the Court shall set aside the decree upon such terms as to costs or otherwise as it thinks fit. The defendants were certainly having a remedy under Order 22 Rule 4 CPC to approach the trial Court praying for setting aside of the award but strangely enough they did not opt to do so. They themselves had not filed any separate suit challenging the judgment and decree in question claimed by the plaintiff. As per their own version, they had come to know about filing of Civil Suit No.499 of 2008 on 12.5.2009 only when the plaintiff in the village showed photocopy of the award dated 19.12.2008 to Hukam Chand - defendant No.3 claiming that he had filed suit against his brothers in Civil Court. The defendants themselves had not initiated any civil or criminal action against the plaintiff. In normal course, if defendants felt that plaintiff had obtained decree in his favour by playing fraud and by way of

misrepresentation and impersonation, the first thing they to do was to report the matter to the police and get criminal action initiated against him and if police did not take any action, to file private criminal complaint. Similarly, they would have filed a civil suit challenging the genuineness of the judgment and decree or for that matter approached the trial Court seeking setting aside of the award in question in their capacity of legal representatives of deceased Sh.Mamu but they did not do so and it was only when they received a notice of the civil suit filed by plaintiff against them, they had filed a counter-claim. Under the circumstances, setting aside of the award passed by the Court set up by the plaintiff was uncalled for. The Courts below were not justified in rejecting claim of the plaintiff and allowing the counter-claim of the defendants declaring the award to be illegal, null and void.

Since the judgment and decree have been found to be legal and valid documents, as a result of the same 1/7 share of Sh.Mamu was acquired by his son Satbir – plaintiff, resultantly he became co-owner in joint possession to the extent of 2/7 share in the suit land. At the time of his death Sh.Mamu was not having any share in 150 kanals 10 marlas of land, therefore mutation sanctioned on the basis of natural sanction qua 1/7 share wrongly done and is liable to be set aside. Even otherwise, mutation does not confer any title. It only serves the purpose of recording change in the ownership.

The judgments are result of misappraisal of evidence and misinterpretation of law, which has resulted in miscarriage of justice. Therefore, the judgments and decrees passed by the Courts below are hereby set aside by way of acceptance of appeal. Resultantly, the suit of the plaintiff for declaration succeeds and decreed to the effect that he is owner in possession of the land measuring 43 kanals 0 marlas being 2/7 share of land measuring 150 kanals 10 marlas as detailed in the head-note of the plaint situated at village Bhandari, Sub Tehsil Madlauda, District Panipat, as per jamabandi for the year 2000-01 and mutation No.2555 sanctioned on the basis of natural inheritance is illegal, null and void, is passed in favour of the plaintiff against the defendants and as a consequential relief the defendants are restrained from interfering in peaceful possession of the plaintiff as co-owner over the suit land. Resultantly the counter-claim filed by the defendants stand dismissed.

29.8.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No