

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

**RSA No.4135 of 2018 (O&M)
Date of Decision:29.01.2019**

Resham through LRs

.....Appellant

Versus

Bharpai and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Hemen Aggarwal, Advocate
for the applicant-appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated 21.08.2013, passed by the learned Additional Civil Judge (Sr. Division), Narwana, as well as judgment and decree dated 27.02.2017, passed by the learned Additional District Judge, Jind, whereby suit for declaration and possession filed by the plaintiff-appellant has been dismissed.

Brief facts necessary for the adjudication of the case are that suit for declaration was filed by the plaintiff to the effect that judgment and decree dated 12.06.1989 passed in Civil Suit No. 517 of 12.06.1989 regarding land measuring 38K-19-M as described in the plaint was illegal, null, void, based on fraud, cheating and thus liable to be set aside. Possession of the land was sought as well. It was pleaded that father of the plaintiff namely Aladiya was owner to the extent of $\frac{1}{2}$ share in the total land measuring 38K-19M. Plaintiff and her sister namely Phullan succeeded to this half share. Consequently, plaintiff became owner in possession of $\frac{1}{4}$ share of the total property. Plaintiff and her sister had no brother. Plaintiff

remained sick and stayed with her sister. Father of the defendants namely Chandgi was related to the plaintiff as brother in the brotherhood. Chandgi looked after the land and was in cultivating possession of the same. Rent would be given to the plaintiff and her sister by Chandgi as and when they visited their parental village. Plaintiff and her sister expressed their desire to dispose of their property. At that stage, the defendants revealed that the property did not exist in their name and their father Chandgi by having the plaintiff and her sister impersonated, had transferred the land. It was pleaded that (i) the plaintiff never visited the court nor affixed her thumb impressions on the written statement or any other statement, (ii) sister of the plaintiff told her that she was called in the court by Chandgi, who requested her to affix their thumb impressions on some blank papers and those papers have been used in getting the impugned decree; (iii) the decree does not carry any weight in the eyes of law as it is unregistered. The plaintiff requested the defendant to get the said decree set aside and give possession of the land to her but they kept on lingering the matter and finally refused. Hence the suit was filed.

Defendants resisted the suit. Various preliminary objections were taken in the written statement. Averments on merits were controverted. It was stated that the plaintiff was happily married in her family. Deceased- Chandgi was her cousin brother, who had fulfilled all social and moral obligations of a real brother. It was admitted that the plaintiff was earlier the owner to the extent of $\frac{1}{4}$ share in the property in dispute. It was denied that the plaintiff was sick at the passing of the impugned decree. Family settlement was arrived at between the father of the defendants and the

plaintiff in the year 1988. Suit was instituted on 12.06.1989 on the basis of the settlement. Plaintiff appeared before the Court and made a statement herself. She was aware of the judgment and decree dated 12.06.1989. After the death of Chandgi, the defendants continued as owners in possession of the property. Suit of the plaintiff was claimed to be barred by limitation. Mutation was entered and sanctioned in the presence of the plaintiff. It was denied that there was any fraud or impersonation. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether impugned judgement/decreed dated 12.06.1989 passed in Civil Suit No. 517/12.06.1989 titled Chandgi Versus Smt. Phulla and Ors. Are illegal, null and void and not binding on the rights of the plaintiff and consequent entries in the revenue records are also illegal?
OPP
2. If issue no.1 is proved, whether plaintiff is entitled for decree of declaration and injunction as prayed for?OPP
3. Whether plaintiff has no locus-standi to file the suit?OPD
4. Whether suit is barred by limitation?OPD
5. Whether true and material facts have been suppressed?
OPD
6. 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 the evidence on record concluded that the plaintiffs failed to prove fraud or that the decree dated 12.06.1989 was obtained by impersonation. It was held that the plaintiff was proved to be happily married and staying in

her matrimonial house. Chandgi was related to her in third generation. Suit was accordingly dismissed vide judgment and decree dated 21.08.2013.

Appeal filed by the plaintiff-appellants through her LRs was dismissed by the learned Additional District Judge, Jind, vide impugned judgment and decree dated 27.02.2017.

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

Learned counsel for the applicant-appellant argues that the evidence on record clearly proves that the judgment and decree dated 20.06.1989 has been wrongly passed on the basis of the alleged family settlement arrived at in the year 1988. The evidence of the handwriting expert-PW-2-Kamal Kant Khandelwal, has been wrongly ignored by both the learned Courts below. It is thus prayed that this appeal be allowed and the impugned judgements and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the appellant-plaintiffs be decreed throughout.

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

Plaintiff along with her sister-Phullan had succeeded to half share of their father Alladiya in the total land measuring 38K-19-M. Undisputedly, the plaintiff and her sister became owners of $\frac{1}{4}$ share each in the said property. It is pleaded by the plaintiff that she used to remain sick and stayed with her sister-Phullan. Decree dated 12.06.1989 vide which land was transferred to Chandgi was the result of fraud and impersonation. Plaintiff has testified as PW-1 before the learned trial Court. PW-2-Kamal

Kant Khandelwal, has been examined as an expert witness. PW-3-Shamsher son of Phullan and PW-4-Birbal have been examined to prove the case of the plaintiff.

Defendants have examined DW-1-Mr. S.K.Goyal, Advocate, who was engaged as a counsel by Chandgi in Civil Suit No. 51 dated 12.06.1989. DW-1 stated that he knew the plaintiff and his sister. He specifically stated that the plaintiff had herself appeared in the Court and admitted the contents of the plaint. Her statement was recorded on oath. DW-2-Dr. Inderjit Singh, is the expert witness examined by the defendants. It is a matter of record that after the passing of decree dated 12.06.1989, mutations were sanctioned on that basis. There is no evidence on record to show that any rent etc., was ever given by Chandgi to the plaintiff and her sister after passing of the decree in 1989.

Once the plaintiff pleaded fraud and impersonation, needless to say, it was incumbent upon the plaintiff to have proved the same by leading specific and positive evidence in this regard. PW-2-Kamal Kant Khandelwal, handwriting expert examined by the plaintiff has admitted in his cross-examination that he has not obtained any diploma or degree in forensic science, but was a commerce graduate. There is no question of any reliance on the testimony of PW-2 as is urged by learned counsel for the appellants. Decree dated 12.06.1989 passed in the year 1989. Plaintiff filed this suit on 26.03.2009. There is indeed not an iota of evidence explaining the delay which is one of the telling circumstance in this case. Civil Suit No. 517 was filed on 12.06.1989. Written statement Ex.P-2 admitting the claim of Chandgi, was filed by the plaintiff and her sister and their separate

statement, Ex.P-3 was recorded in the presence of their counsel. DW-1-Mr.S.K.Goyal, has duly deposed in this respect. Decree dated 12.06.1989 Ex.P-4/D-7 was passed. Mutation thereof was duly sanctioned.

It is relevant to note at this stage that after a lapse of about 20 years, the plaintiff has raised a challenge to the said decree. It is pleaded by the plaintiff that her sister had revealed that Chandgi had called her to Court and she had been asked to affix her thumb impressions on blank papers which have been misused to draw up the decree dated 12.06.1989. Plaintiff's sister Phullan has admittedly not challenged the said decree. Phullan has not even stepped in the witness box to support the appellant's case. The plaintiff has clearly failed to prove that decree dated 12.06.1989 was the result of fraud and misrepresentation.

Argument that the said decree required registration is not acceptable for the reason that it was passed on the basis of a family settlement. Chandgi was a cousin brother of the plaintiff. It is a settled position that in such circumstances, registration is not required. It is rightly held by both the learned Courts below that the plaintiff has failed to prove her case.

Learned counsel for the appellant-plaintiffs 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 21.08.2013 and 27.02.2017 passed by the learned Additional Civil Judge (Sr. Division) Narwana and learned Additional District Judge, Jind, respectively, are upheld.

There is a delay of 34 days in filing and 154 days in re-filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing or re-filing this appeal has been rendered academic. Applications are accordingly disposed of.

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

29.01.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.