

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

**RSA No.5842 of 2018 (O&M)
Date of decision :10.7.2019**

Harbhajan Singh and others

...Appellants

Vs.

Charan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Lajpat Sharma, Advocate for
Ms.Garima Sharma, Advocate for the appellants.

RAMENDRA JAIN, J. (ORAL)

Unsuccessful plaintiffs have come before this Court by way of this Regular Second Appeal after dismissal of their appeal by the Ist Appellate Court vide judgment dated 7.5.2018, affirming the judgment and decree of the trial Court dated 19.5.2014, thereby dismissing their suit to declare them owner in possession of land measuring 138 Kanals 17 marlas being ½ share of 277 Kanals 15 marlas, situated at village Jansui, Tehsil and District Ambala and to deliver them possession of the same by nullifying the sale deed executed by contesting respondents in favour of third party having no binding effect upon their rights.

According to the appellants, deceased Dhyan Singh was common ancestor of the parties, who left behind two sons, namely, Kartar Singh and Harnam Singh at the time of his death in the year 1927.

Appellants and proforma respondent No.31 were the lineal descendant of

Kartar Singh, whereas the respondents were the lineal descendants of Balwant Singh. Dhyan Singh had certain lands in Pakistan also. He was having 220 Kanals 01 marla in village Santokhi, Tehsil Samudri, District Layalpur (Pakistan), besides land measuring 36 Bighas 13 Biswas in village Panjokhra, Tehsil and District Ambala. Father of the appellants Kartar Singh had pre-deceased Dhyan Singh. Therefore, his son appellant Gurbax Singh predecessor-in-interest of the appellants was living with his uncle Harnam Singh, ancestor of the contesting respondents. Their age at the time of death of Dhyan Singh was 10 years and 8 year respectively. After the death of Dhyan Singh, Gurbax Singh started living with his maternal grandmother at village Burail, Tehsil Kharar. $\frac{1}{2}$ of the share of land of Dhyan Singh situated in village Panjokhra was mutated in favour of Harnam Singh, whereas rest $\frac{1}{2}$ share was mutated in favour of Harbans Singh and Gurbax Singh, ancestors of the contesting respondents which was jointly sold by them. However, ancestors of the contesting respondents illegally got mutated the entire land allotted to them in lieu of the land left by their predecessor-in-interest Dhayan Singh in Pakistan in their favour in exclusion of the ancestors of the plaintiff. They came to know about the said fact in the year 1976 through one Dev Singh, who had met the ancestors of the appellants, namely, Gurbax Singh to solemnise marriage of his daughter with one of the appellants, namely, Harbhajan Singh-appellant No.1. The above action of predecessor-in-interest of respondents of getting entered mutation of the entire land including the share of the appellants in his name in village Jansui, was the result of fraud and misrepresentation. Father of the appellants Gurbax Singh had also laid challenge to the mutation in favour of the contesting respondents by way of a civil suit, which was withdrawn on

the assurance of contesting respondents No.1 to 3 that they would deliver their share to them, but did not do so. Hence the suit.

Upon notice, respondents No.1 to 3 contested the suit . The trial court after holding full-fledged trial, dismissed the suit vide judgment and decree dated 19.5.2014. Being aggrieved, the appellants-plaintiff approached the first appellate Court, but remained unsuccessful as their appeal too was dismissed vide judgment and decree dated 7.5.2018.

Learned counsel for the appellants contends that both the Courts below have failed to appreciate that earlier suit filed by the father of the appellants, namely, Gurbax Singh for the same relief was not decided on merits, rather was simply dismissed as withdrawn. Therefore, principle of “resjudicata” has wrongly been applied by both the Courts below without appreciating the fact that the same can only be applied when a suit is decided on merits.

Having given thoughtful consideration to the submissions made by learned counsel for the appellants, this Court finds the instant appeal completely devoid of merits on the following reasons.

No question of law much less substantial has been framed, therefore, this regular second appeal is not maintainable.

Dismissal of earlier suit filed by ancestors of the appellants, namely, Gurbax singh as withdrawn or otherwise in default is an admitted fact.

Therefore, it is apparent that the present suit of the appellants was legally barred under Order 2 Rule 2 CPC and principle of “resjudicata”.

More so, as per own averments in their pleadings, the appellants had come to know about the alleged fraud committed by the

ancestors of the contesting respondents in the year 1976 through one Dev Kumar, but they filed civil suit in the year 2008 i.e. after a period of more than 32 years. There is no explanation on the file as to why the appellants for such a long period do not choose to seek legal remedy in Court for their alleged valuable right.

Since the suit filed by the plaintiff-appellants was hopelessly time barred, therefore, from this angle too, this Court is not inclined to disturb the concurrent findings of both the Courts below in this respect.

In view of the above discussion, I do not find any illegality in the judgments passed by both the Courts below. The present appeal is hereby dismissed.

10.7.2019
Meenu

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No