

RSA-219 of 2019 (O&M)

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

RSA-219 of 2019 (O&M)
Date of decision: 22.07.2019

Manmohan Singh

.....Appellant

versus

Gurdeep Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Arun Jain, Sr. Advocate,
with Mr. Varun Parkash, Advocate, for the appellant.
Mr. Vikas Bahl, Sr. Advocate,
with Ms. Priyanka Kansal, Advocate, and
Mr. Manish Kumar Singla, Advocate,
for respondents No.1 to 3.

RAMENDRA JAIN, J. (ORAL)

Unsuccessful alleged attorney, namely, Onkar Singh of the plaintiff Manmohan Singh has filed this Regular Second Appeal against judgment and decree of the First Appellate Court dated 28.09.2018, dismissing his appeal thereby affirming the judgment and decree of the trial Court dated 06.03.2017, whereby, by a common judgment his suit for declaration was dismissed, simultaneously decreeing three suits of respondents for permanent injunction.

Briefly, appellant Manmohan Singh was owner in possession of 10 acres 02 marlas of land (in short the 'suit land') fully detailed in the judgment of trial Court situated in Village Jamalpur Awana, Tehsil and District Ludhiana, having a son and a daughter, besides his wife namely, Kamaljit Kaur. His matrimonial life went in rough weather. Admittedly, he

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suffered decree dated 05.10.1976 in favour of his wife, who along with his children shifted to Bombay and at present were settled there permanently. On the basis of said decree, wife of Manmohan Singh got sanctioned the mutation in her favour.

Suit land was scattered in different parcels. Therefore, vide 11 sale deeds, she and her children further sold suit land to respondents No.1 to 3 in the year 1995. Manmohan Singh never laid challenge to the said judgment and decree dated 05.10.1976 till the year 1996. Around 20 years thereafter, Manmohan Singh through his brother Onkar Singh filed a suit for declaration and permanent injunction challenging the said decree and mutation thereof suffered by him on the ground that since it was an unregistered document, therefore, had no binding effect upon him. Resultantly, any transaction on the basis thereof entered into by his wife and children in favour of respondents No.1 to 3 was also invalid, illegal and non est in the eyes of law.

Simultaneously, respondents No.1 to 3 also filed three suits for permanent injunction against appellant Manmohan Singh to restrain him from interfering into their peaceful possession as owner over the suit land.

All the four suits were consolidated and were contested tooth and nail by both the sides.

After holding complete trial, trial Court dismissed the suit for declaration and permanent injunction filed by the appellant and decreed the suits of respondents No.1 to 3 for permanent injunction vide judgment and decree dated 06.03.2017.

Being aggrieved, appellant Manmohan Singh preferred four

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appeals laying challenge to the aforesaid judgment and decree, but remained unsuccessful as his all the appeals were dismissed by the appellate Court vide judgment and decree dated 28.09.2018.

Learned Senior counsel, assisted by Mr. Varun Parkash, learned counsel for the appellant *inter alia* contends that both the Courts below failed to appreciate that decree dated 05.10.1976 allegedly executed by appellant in favour of his wife and children was non est in the eyes of law, being an unregistered document, more particularly, when plaintiff never admitted its due execution. It was compulsorily required to be registered, because rights through it were created for the first time in favour of respondents No.4 to 6. Aforesaid judgment and decree being unregistered did not confer any title or interest in favour of vendors of respondents No.1 to 3. Therefore, they could not have derived any better title than their vendor. Both the Courts below also did not consider that mutation does not confer any title. It only enables the revenue authorities to collect land revenue. Both the Courts below illegally ignored two spot inspection reports dated 29.11.1996 (Ex.PW8/5) and dated 02.09.1997 (Ex.PW8/6) duly proved on record, whereby revenue officials categorically found possession of appellant over the suit property on the spot. Considering above spot inspection reports, appellant was granted permanent injunction upto this Court upon his application against respondents No.1 to 3 under Order 39 Rules 1 and 2 of the Code of Civil Procedure. Both the Courts below have illegally held the suit of the appellant time-barred, ignoring the fact that it was filed within limitation as soon as respondents No.1 to 3 tried to dispossess him from the suit land. Both the Courts below also failed to

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appreciate that it was bounden duty of respondents No.1 to 3 to produce copy of judgment and decree and its concealment from the Court would require to draw adverse inference against them that they had no clear title qua suit property and thus, did not produce the same. In support of his contentions, learned counsel for the appellant placed reliance on ***Phool Patti and another v. Ram Singh (Dead) through LRs and another***, 2015 (1) R.C.R.(Civil) 606 (SC), ***Bhoop Singh v. Ram Singh Major***, 1996(1) PLR 559 (S.C.), ***Roshan Lal and another v. Resham Lal and another***, 2005(2) R.C.R.(Civil) 445 (P&H), ***Jai Narain v. Smt. Sona Devi***, 2006(2) Civil Court Cases 99 (P&H), ***Inder Singh and others v. Deiya (since deceased) represented by his LRs and another***, RSA No.2531 of 2003 decided on 26.09.2011 (P&H), ***Ajit Kaur @ Surjit Kaur v. Darshan Singh (Dead) through LRs***, 2019(2) R.C.R.(Civil) 786 (S.C.), ***Durga Das v. Collector and others***, 1997(2) R.C.R.(Civil) 84 (S.C.), ***Dhian Singh v. Sheela Devi and others***, 2008(1) R.C.R.(Civil) 792 (P&H), ***Bhajan Kaur v. Nasib Kaur and others***, 2018(2) Law Herald 1164 (P&H), ***Gurdip Singh v. Manmohan Singh and others***, 2000(4) R.C.R.(Civil) 19 (P&H), ***Manmohan Singh v. Financial Commissioner, Appeals-II, Punjab***, CWP No.19526 of 2007 decided on 03.08.2007 (P&H), ***Manmohan Singh v. Financial Commissioner, Appeals-II, Punjab and others***, CWP No.10234 of 2008 decided on 03.08.2011 (P&H) and ***Ibrahim alias Dharam vir v. Smt. Sharifan alias Shanti***, 1979 PLJ 469 (P&H).

On the other hand, learned counsel for Caveator-respondents No.1 to 3, pleading legality and validity of the judgments of both the Courts below, prayed for dismissal of the appeal.

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Having given thoughtful consideration to the rival submissions, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

No question of law much less substantial has been raised in this appeal. Therefore, same is held not maintainable.

The issue as to whether decree dated 05.10.1976 executed by the appellant in favour of his wife and children being unregistered was non est or not a legal document, was only in between appellant on one hand and his wife and children on the other hand, they being beneficiaries through it and not between appellant and respondents No.1 to 3, who are *bona fide* purchasers of the suit land.

Undisputedly, aforesaid decree dated 05.10.1976 was given effect in revenue record. Respondents No.1 to 3 purchased the suit land, which was scattered at various places vide different 11 registered sale deeds on the basis of mutation in favour of their vendors.

To prove *bona fide*, a purchaser is required to prove that he made all best possible efforts to find out genuineness of the title of property, which he intended to purchase by making local enquiries or going through the title deeds or revenue record. Since, on the date of purchase of the suit land by respondents No.1 to 3, revenue entries were in favour of their vendors i.e. respondents No.4 to 6 showing their ownership and possession since long, therefore, this Court has no hesitation in holding that nothing more was required for respondents No.1 to 3 to prove themselves as *bona fide* purchasers of the suit land.

Initially, appellant filed a suit for permanent injunction against

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the contesting respondents, but after three years, in 1996, he amended the plaint, claiming relief of declaration and for the first time disclosed the factum of decree dated 05.10.1976 suffered by him in favour of his wife and children i.e. respondents No.4 to 6. Why the appellant at the very threshold at the time of filing suit for permanent injunction did not lay challenge to judgment and decree dated 05.10.1976, is unexplained on the file. It seems that after obtaining some belated legal advice, he amended the plaint and laid challenge to judgment and decree dated 05.10.1976.

Appellant did not ever enter into witness box. His alleged attorney Onkar Singh during trial as PW8 admitted that original attorney allegedly executed by Manmohan Singh was lying at home. Why did he not produce original attorney in his favour is again a fact which creates suspicion on the entire conduct of the appellant and from overall facts and circumstances, this Court gathers that instant litigation has been filed by brother of Manmohan Singh with dis-honest intention to usurp the suit land, which was validly purchased by respondents No.1 to 3 from their vendors by using his name, though Manmohan Singh himself may not be intending to file any litigation against contesting respondents or his wife and children. Why appellant Manmohan Singh has been kept behind the scene or out of reach of the Court is also unexplained inasmuch as he did not ever come forward and enter into the witness box to depose in support of his contention. PW6 Rabinder Singh son of Onkar Singh alleged attorney of appellant categorically stated that appellant Manmohan Singh can move and walk. He usually walks with the help of stick and use to go to his routine work; meaning thereby appellant Manmohan Singh still is a man of

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ordinary prudence and physically fit to do his routine work. Therefore, any medical report, showing him suffering from blood pressure etc. does not by in itself prove his legal infirmity to contest the instant litigation.

Undisputedly, one of the brothers of the appellant, namely, Bachittar Singh in the year 1982 filed a suit for declaration against contesting respondents, appellant and his other brothers, including Onkar Singh alleged attorney of appellant Manmohan Singh, wherein also judgment and decree dated 05.10.1976 was very much challenged. Therein issue was framed as to whether judgment and decree dated 05.10.976 was invalid, which was answered against Bachittar Singh. Resultantly, the said suit was dismissed on merit vide judgment and decree dated 29.03.1985 (Ex.D86) upholding judgment and decree dated 05.10.1976 as legal and valid.

Being aggrieved, Bachittar Singh approached the first appellate Court, but remained unsuccessful as his appeal too was dismissed vide judgment and decree dated 08.02.1988 (Ex.D89). Therefore, said judgment and decree attained finality. Hence, this Court is of the considered view that instant suit filed by the appellant after more than 20 years was hit by the doctrine of "*res judicata*" and was barred under Order 2 Rule 2 CPC inasmuch as he was very much party to the earlier litigation. Bachittar Singh further filed RSA No.1969 of 1988 in which some compromise took place. However, the legality and validity of judgment and decree dated 05.10.1976 was kept intact. Therefore, once validity of judgment and decree dated 05.10.1976 stood confirmed and kept intact vide earlier judgment and decree in a suit filed by Bachittar Singh upto this Court,

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therefore, the same could not have been challenged by the appellant in the instant suit.

By this time it is well-settled that validity of a decree can be challenged on the basis of fraud and mis-representation and not on the ground of its non-registration. Reference can be had to the judgment in ***Sneh Gupta v. Devi Sarup and others***, 2009(2) R.C.R.(Civil) 129 (S.C.) and ***Parveen Kumar v. Shiv Ram alias Sheo Ram***, 2000(1) R.C.R.(Civil) 122.

In the instant case, appellant got drafted the plaint very cleverly laying challenge to the judgment and decree dated 05.10.1976 suffered by him in favour of his wife and children, only giving a passing reference in para No.6 of the amended plaint. It is well-settled that plaintiff has to stand on his own legs. He cannot be permitted to take advantage of weaknesses of the defendant. Since appellant-plaintiff himself was aggrieved of the judgment and decree dated 05.10.1976 and wanted it to be declared null and void, therefore, it was his bounden duty to produce the same on record and not of the contesting respondents inasmuch as they had purchased the suit land after verifying title of their vendors from the revenue record and not on the basis of aforesaid judgment and decree.

In all the 11 sale deeds there is no reference to the judgment and decree dated 05.10.1976. Therefore, there was no occasion for contesting respondents to come to know about the aforesaid judgment and decree, which was given effect around 20 years back in the revenue record. Non-production of judgment and decree dated 05.10.1976 by the appellant requires to draw adverse inference against him that he did not adopt any such exercise knowing-well that same was valid one and, thus, its

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production may nullify his claim.

That apart, burden to prove that judgment and decree dated 05.10.1976 was null and void was upon appellant. In case, he would have discharged his burden successfully in that eventuality onus ought to have shifted upon contesting respondents. Lower appellate Court has rightly observed that non-examination of appellant-plaintiff made entire facts undisclosed for which adverse inference is required to be drawn against him.

Alleged spot inspection reports dated 29.11.1996 (Ex.PW8/5) and dated 02.09.1997 (Ex.PW8/6) were superseded by two latest spot inspection reports dated 19.10.2000 (Ex.D56) and dated 20.10.2000 (Ex.D58), therefore, they lost their significance.

Appellate Court has rightly held that respondents No.4 to 6 were residing at Bombay and they were not in possession of the suit property, rather possession of respondents No.1 to 3 was duly proved on record on the basis of sale deed Ex.D1 to Ex.D11 in favour of contesting respondents, whereby possession was also delivered to them. Appellant-plaintiff could not rebut the endorsement in mutation Ex.D55 by revenue authorities that judgment and decree suffered by him in favour of his wife and children was produced before them by appellant Manmohan Singh himself. Therefore, it is apparent on the record that appellant-plaintiff himself was party to the mutation, which was entered and sanctioned on the basis of aforesaid judgment and decree suffered by him in favour of his wife and children.

As discussed above, appellant laid challenge to the judgment

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and decree after more than 20 years. Limitation to challenge a civil Court decree is three years under Article 58 of the Limitation Act. Therefore, this Court is not inclined to differ with the concurrent findings of both the Courts below that suit of the appellant was hopelessly time-barred. Reliance can be had to ***Iqbal Singh v. Harnek Sing***, 1998(2) R.C.R.(Civil) 264 (P&H).

Hon'ble Supreme Court in ***Bachan Singh v. Kartar Singh and others***, 2002(3) R.C.R.(Civil) 495 and this Court in ***Piara Singh @ Mukhtiar Singh v. Jagsir Singh and others***, 2009(48) R.C.R.(Civil) 840 have held that a consent decree passed by the Court is not compulsorily registrable.

This Court has no dispute with the settled proposition of law that decree which declares pre-existing rights is not registrable, but a decree which creates right or title for the first time is compulsorily registrable as has been held in ***Bhoop Singh*** (supra), ***Roshan Lal*** (supra) and ***Phool Patti*** (supra), but at the same time I would like to add that, as discussed above, this issue was only between appellant, his wife and children and not between him and contesting respondents. Vide judgment and decree dated 05.10.1976 appellant had transferred suit land in favour of his own wife and children. Since they were in close relations to each other, therefore, said judgment and decree has definitely conferred right, title and interest in their favour even if it was unregistered. In ***Bachan Singh*** (supra) also, it has been held by the Apex Court that consent decree is not compulsorily registrable.

Facts and circumstances of ***Surjit Kaur*** (supra), ***Durga Dass***

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(supra) and ***Bhajan Kaur*** (supra) deal with the issue as to whether mutation confers any right or title against. This Court has no dispute with the aforesaid authorities, but would like to add that contesting respondents are not claiming their right, title or interest in the suit property on the basis of mutation, rather they are claiming their such right on the basis of sale deeds Ex.D1 to Ex.D11 executed by their vendors. Therefore, said authorities have no application in the facts and circumstances of instant case.

As far as decision of this Court upon application of the appellant under Order 39 Rules 1 and 2 CPC in his favour his concerned, same was only interim relief to the appellant till disposal of his suit and, thus, has lost its significance after dismissal of his suit by two Courts below recording concurrent findings against him.

In view of discussion made above, this appeal fails and is dismissed with costs.

July 22, 2019
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No