

In the High Court of Punjab and Haryana at Chandigarh

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RSA-979-2019 (O & M)

Date of Decision: February 19, 2020

**RAM KANWAR SINCE DECEASED
THROUGH LRS**

.....APPELLANT

VERSUS

AZAD SINGH AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Dhananjay Mittal, Advocate
for the appellant.

ANUPINDER SINGH GREWAL, J (ORAL)

The appellant/plaintiff has challenged the judgments of the Courts below whereby the suit for declaration and permanent injunction was dismissed.

Learned counsel for the appellant contends that the decree in civil suit No.493/94 had been obtained by fraud as he had produced ample evidence in regard thereto and the suit of the appellant should have been decreed.

Heard.

The appellant/plaintiff had filed a suit for declaration and permanent injunction against the respondents/defendants seeking relief for declaration to the effect that the judgment and decree dated 25.08.1994 passed in Civil Suit No.493/94 and mutation No.657 entered and sanctioned on 17.05.1995 and the sale deed No.2800 dated 02.09.2004 and mutation No.768

entered and sanctioned on 16.09.2004, are illegal, null and void and not binding on the rights of the appellant/plaintiff and the appellant is owner in possession of 1/6th share of the estate left by late Juglal and restraining the defendants No.1 to 7 from interfering in the possession of the appellant/plaintiff.

Civil suit No.493/94 had been preferred by defendant No.1 - Azad Singh against his uncle Juglal seeking declaration regarding his share of the agricultural land. The suit had been decreed 25.08.1994 on the basis of oral settlement reached between Azad Singh and Juglal. On the basis of decree, mutation No.657 was entered and sanctioned on 17.05.1995. Later, Juglal is stated to have challenged the decree by preferring an appeal. However, the appeal was dismissed in default and Juglal is not stated to have taken any further steps to pursue the same or file any other proceedings. The judgment and decree dated 25.08.1994, therefore, had attained finality.

It was defendant No.1 who had later sold the suit land vide sale deed No.2800 dated 02.09.2004 to defendant No.7 and on the basis thereof mutation No.768 had been entered. The instant suit had been preferred by the appellant-plaintiff in the year 2009 which was after 15 years of the civil suit No.493/94 having been decreed on 25.08.1994. It is to be noticed that partition of the suit land is stated to have taken place in the year 2005 after the sale of the property to defendant No.7 as it had been entered in the name of the co-owners who were also in possession as co-sharers. The share of defendant No.7 was separated in the partition wherein the appellant-plaintiff was also a party. The appellant/plaintiff having been party to the partition in the year 2005 did not raise any objection thereto or take recourse to any remedy till the filing of the instant suit after 08 years.

In view of the above, I do not find any merit in this appeal which stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

February 19, 2020
A.Kaundal

Whether speaking/ reasoned	:	Yes/No
Whether Reportable	:	Yes/No