

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

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**RSA No. 3647 of 2008 (O & M)
Date of decision : 24.1.2020**

Surjit Singh and others

.....Appellants

Vs.

Ranjit Singh

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. C.B. Goel, Advocate, for the appellants

Mr. Vineet Chaudhary, Advocate, for the respondent

Rajbir Sehrawat, J. (Oral)

This second appeal is filed by the defendants in the original suit, challenging the judgment and decree dated 26.5.2008, passed by the lower Appellate Court, whereby, while reversing the judgment and decree dated 10.2.2006, passed by the trial Court, the suit filed by the plaintiff (respondent herein), has been ordered to be decreed.

For the convenience, the parties hereinafter would be referred to as the plaintiff and the defendants, as they were mentioned in the original suit.

The facts in brief, as involved in the case are, that the plaintiff had filed a suit challenging the decree dated 18.5.1972, passed in Civil Suit No. 1011 of 1972, regarding the land measuring 223 kanals 17 marlas, for declaring the same as null, void, non-est and not binding on the proprietary and possessory rights of the plaintiffs. The basis for challenging the decree was that the father of the plaintiff, namely; Tulsi Ram son of Jee Ram was the

Karta of Joint Hindu Family, having 244 kanals 18 marls of land, which was

ancestral property of Joint Hindu Family; consisting of the plaintiff and his father. Besides this land, the family of the plaintiff was also having share in the land recorded in the revenue record as comprised in *Khewat Jumla Malkan*. The partition of this land owned by proprietary body was effected through the order of the Assistant Collector First Grade, Kaithal dated 29.7.1967. In this partition, the father of the plaintiff, as *Karta* of Joint Hindu Family, had also got 223 kanals 17 marls (the suit land), as the share of the family of the plaintiff from the land of *Jumla Mushtarka Malkan* on pro rata basis, as per the contribution made by their forefathers earlier. However, the defendants obtained the above said decree dated 18.5.1972, qua this land of 223 *kanals* 17 *marlas* fraudulently from the father of the plaintiff. Hence, the land which should have come to the plaintiff, has wrongly been taken over by the defendants through fraudulent impugned decree. It was further pleaded that since the defendants were not members of the family and despite that they were getting the land through decree of the Court, therefore, the impugned decree required registration. However, the said decree was not got registered. Hence, the decree had no value in the eyes of law qua the title of the land.

It was further claimed by the plaintiff that earlier the plaintiff was not aware of the decree. However, in the year 2001, the defendants started proclaiming that they had won the case against the Authorities of the Consolidation Department, wherein the suit land, which was earlier given in surplus by the father of the plaintiff, had come back to the defendants. It was also proclaimed by the defendants that since the land given by the father of the plaintiff to the Authorities of the surplus department had come back to the defendants, therefore, now the defendants would inform the Consolidation

Authorities to take away equivalent land from the other land of the plaintiff. When the plaintiff tried to find out the truth regarding the declaration of surplus of land by the father of the plaintiff; then the plaintiff came to know of the above said fraudulent decree in favour of the defendants. Accordingly, the suit challenging the decree was filed.

The suit was contested by the appellants/defendants on the ground that the suit land was not the ancestral property. The property was received by Tulsi Ram in partition proceedings; in the proceedings filed by the proprietary body of the village against the Gram Panchayat. Hence the suit land was self acquired property. It was also averred that Tulsi Ram himself had appeared before the Court and filed the written statement admitting the claim of the defendants. Even the statement of Tulsi Ram was recorded separately. Accordingly, the decree was rightly passed. Hence, there is no fraud involved in the decree in question. It was further pleaded by the defendants that since the decree was based on family settlement, therefore, the same did not require registration. The suit filed by the plaintiff is time barred. Still further, it was asserted by the defendants that the plaintiff was not even in existence at the time; when his father Tulsi Ram acquired the suit land or when he had transferred the said land in favour of the defendants through the impugned decree. Therefore, otherwise also; the plaintiff could not claim any share in the property at the time when the decree was suffered by his father. The other peripheral pleadings were also raised by the defendants.

The plaintiff himself appeared as PW3 and examined two other witnesses. He also placed on record the documents Ex.P-1 to P-14, which includes various judgments and decrees as well as *jamabandis* along with his

matriculation certificate Ex.P-15. On the other hand, the defendants examined himself as DW1 and examined Advocate Hawa Singh Nain and Kanungo Krishan Chand as DW3 and DW2. Besides this, the defendants also placed on record Ex. DW2/A, which is copy of page No. 23 of Surplus Proceedings file of Tulsi Ram and Ex. DW2/B, which is an affidavit dated 14.6.1978.

After appreciating the evidence and perusing the record of the parties, the trial Court dismissed the suit filed by the plaintiff. Trial Court held that there was no fraud involved in the impugned decree. Besides this, the suit filed by the plaintiff was also held to be time barred. Aggrieved against the judgment and decree passed by the trial Court, the plaintiff preferred the appeal before the lower Appellate Court. After hearing the parties and appreciating the evidence, the lower Appellate Court reversed the judgment and the decree passed by the trial Court and decreed the suit filed by the plaintiff. It is against this judgment and decree passed by the lower Appellate Court that the present appeal has been preferred by the defendants in the original suit.

At the time of admission of the appeal, the substantial question of law as involved in the present petition was framed as under :-

“Whether the suit filed by the plaintiff was time barred and not maintainable?”

While arguing the case, learned counsel for the defendants has submitted that the lower Appellate Court has wrongly reversed the well reasoned judgment and decree passed by the trial Court. It is further submitted that there is no evidence led on file to show that the property in question was ancestral property. Therefore, the plaintiff cannot claimed to have any right title or interest in the property as such, as on the date of suffering the said decree by his father in favour of the defendants. Hence, the plaintiff does not

have any locus standi to file the suit. It is further contended by learned counsel for the defendants that otherwise also, due to the intervening fact of surplus proceedings, during which the father of the plaintiff had exercised his option to release the suit property to be declared as surplus under Haryana Ceiling of Land Holding Act, 1972, the family of the plaintiff had lost all rights qua this land. The plaintiff never challenged the orders passed by the Authority qua the land being declared as surplus. From his side, the land would have finally gone to the surplus pool. However, it is only the defendants who had challenged that action of the authorities of the Surplus lands Department; on the ground that they were not given notice before finally declaring the land as surplus despite they having acquired the title on the basis of the decree. It is only on the suit filed by the defendants that the land has been released from the Surplus lands. Hence, the defendants have, otherwise also, got an independent right to the land and the plaintiff has forfeited his right to the said land. Counsel has also submitted that the suit filed by the plaintiff was not even maintainable. Since it was a compromise decree, therefore, if at all the plaintiff was aggrieved of the same, the remedy available to him was only to file an application in the same suit. Any independent suit to challenge a compromise decree is barred by Order 23 Rule 3 A of CPC. Hence, the suit of the plaintiff to challenge the impugned decree is not maintainable. The counsel had relied upon a Division Bench judgment of this Court rendered in **'Gurdev Kaur and another v. Mehar Singh and others, 1990 (1) PLR 334'**. In the end it is submitted by learned counsel for the defendants that the trial Court had rightly held the suit filed by the plaintiff to be time barred. There is nothing on record to either prove the fraud or to show that the plaintiff did not have the knowledge of the

decree earlier. Therefore, the suit filed by the plaintiff is liable to be dismissed as time barred. Accordingly, the present appeal deserves to be allowed.

On the other hand, learned counsel for the plaintiff has submitted that the lower Appellate Court has rightly reversed the judgment and decree of the trial Court. The lower Appellate Court has rightly recorded the finding that the decree obtained by the defendants was fraudulent. This finding of the lower Appellate Court is based upon the fact that the plaintiff was already born at the time of the impugned decree and the mother of the plaintiff was also there, therefore, there was no reason or occasion for suffering the decree by the father of the plaintiff Tulsi Ram in favour of the defendants who are distant collaterals. Still further, the pleadings in that suit itself were fraudulent, because it was pleaded by the present defendants in the plaint filed by them that Tulsi Ram was unmarried and therefore, was issueless, whereas, Tulsi Ram was married and was having the plaintiff as his son as well. The another reason given by the lower Appellate Court is that the defendants were the grand children of sister of Tulsi Ram, therefore, there could not have been any family settlement between Tulsi Ram and the defendants/their predecessor in interest because the defendants had no pre existing right in the suit land. Further, relying upon the judgment passed by this Court in RSA No. 27 of 1987 decided on 10.10.2013, learned counsel for the plaintiff has pointed out that a similar decree dated 12.6.1981 suffered by his father has also been set aside by the lower Appellate Court; and the judgment of lower Appellate Court in that case; has been upheld by this Court in the above said RSA. The facts of the above said RSA and the present appeal are similar. Hence, no fault could be found with the findings of the lower Appellate Court. Therefore, the present appeal

deserves to be dismissed.

Having heard learned counsel for the parties and having perused the record, this Court does not find any substance in the arguments of learned counsel for the appellant/defendants. Although, the substantial question of law framed in the case is qua limitation only, however, since that issue has also been decided by the lower Appellate Court on the basis of the decree being fraudulent and also qua the rights of the plaintiff in the suit land, therefore, all these aspects have also been argued by the counsel and hence all being considered accordingly.

The positive assertion of the plaintiff in this case has been that the suit land had come to his father in partition proceedings; on account of the share of the family in the land recorded in revenue record and *Jumla Mustarka Malkan va Degar Haqdaraan Hasab Rasab Khewat*, therefore, the said property itself is ancestral property. Although, the defendants have contended that it was not ancestral property; and the nature of the property stood converted into self acquired property; on account of the same coming to the father of the plaintiff by intervention of the orders of the partition authorities, however, this Court finds the argument of the defendants to be fallacious. The very fact that the defendants are not disputing the fact that the suit land had come to the share of the family of the plaintiff in partition proceedings on pro-rata basis from the land which was under the ownership of the proprietary body; shows that the proprietary body itself had got this land earlier on pro-rata cut from the forefathers of the plaintiff. Therefore, on the face of it, the land belonged to the forefathers of the plaintiff. The land in question was taken into the common pool by the proprietary body by applying the pro-rata cut upon the

forefathers of the plaintiff and consequently, the said land had come to the proprietary body, which came to be known as *Jumla Malkaan*. If such a land reverts back to the family on pro-rata basis; then such a land has to be treated as ancestral land only. No doubt, that in a case of ordinary succession, if a person gets land through intervention of a Court decree; then the chain of ancestry stands broken. In that situation, such a decree confers rights qua such a land upon the decree holder in his individual capacity and not he being any member of co-parcenary or Joint Hindu Family property. Whereas, in the present case the order of authorities only reverted that land to the father of the plaintiff, on pro rata basis, which the forefathers of the plaintiff had given to the common pool. Therefore, in such a situation, mere fact of partition and the land coming to the father of the plaintiff through any order of the Assistant Collector would not change the nature of the property. It was ancestral property when it was given in the common pool. The common pool itself comprised of the forefathers/father of the plaintiff along with other forefathers and fathers of the other proprietors of the village. Therefore, by way of partition, the land comes from the owner in his collective capacity as a member of proprietary body to the owner in his joint family capacity. In such a situation, the land received by the father of the plaintiff in partition has to be taken as only reversion of the ancestral property to the father of the plaintiff as *Karta* of the family. Hence, unless proved otherwise, the character of such a property shall be only 'ancestral' in nature. The plaintiff had got a pre existing right in the land on the date when the property had reverted to the family of the plaintiff through the partition order passed by the Assistant Collector. Hence, the impugned decree shall have to be taken as suffered by the father of the

plaintiff without having any authority to suffer the said decree. The father of the plaintiff could not have transferred anything which came to the share of the plaintiff, who was minor at that time.

Otherwise also, the lower Appellate Court has not taken the nature of the property to be 'ancestral' one, for holding the decree fraudulent in nature. However, the categoric finding of the lower Appellate Court is that the plaintiff was very much in existence, having been born 5 years earlier than the date of impugned decree. Therefore, the suit in which the impugned decree was passed, was based upon fraudulent facts, wherein the plaintiff in that case had asserted that father of the plaintiff was unmarried and having no issue. Accordingly, the decree itself was based upon fraudulent facts. Therefore, as held by the lower Appellate Court, since the defendants had made fraudulent pleadings in that plaint; which was based on non existent facts, therefore, the lower Appellate Court has rightly held the decree to be fraudulent one and not binding upon the rights of the plaintiff. Needless to say that in this case although the plaintiff has proved his date of birth by leading evidence, yet the defendants have not led any evidence to show that the plaintiff was not born before the impugned decree was suffered in their favour by the father of the plaintiff. Therefore, the evidence of the plaintiff in this regard has gone unrebutted and thereby; establishing the fact that the plaintiff was very much in existence when his father had suffered decree in favour of the defendants. There is another aspect of the case which supports the finding qua fraud; recorded by the lower Appellate Court. In the earlier suit filed by the defendants in which the impugned decree was passed, it was pleaded by them that the land in question was passed on to them as a gift whereas, in the present

suit they have shifted the stand and claimed that there was a family settlement between Tulsi Ram and them. However, as held by the lower Appellate Court the defendants were only the distant relatives of Tulsi Ram, therefore, there could not have been any family settlement between them. Hence, the decree has rightly been held as fraudulent. This Court does not find any illegality or irregularity even in this finding recorded by the lower Appellate Court. Needless to say, that in RSA No. 27 of 1987, decided on 10.10.2013, this Court had already held on the similar lines.

Coming to the question of limitation, this Court does not find any ground to interfere with the findings recorded by the lower Appellate Court. Since the impugned decree was based on fraud, as held above, and the suit filed by the plaintiff is based on title, therefore, there is no limitation prescribed by law for filing the suit by him, unless the defendants had proved their adverse possession. However, no such adverse possession has been proved by them, by leading any cogent evidence.

Although learned counsel for the defendants has submitted that the land had been given by the father of the plaintiff in the surplus pool, therefore, by any means, rights of the plaintiff shall be taken to have been extinguished qua the suit land and further, that the land has reverted to the defendants only because only they had challenged the surplus proceedings, therefore, they have got independent right to the land, which the plaintiff cannot questioned. However, this Court finds the arguments to be non sustainable. Even as per the assertion of the defendants, the land was given in surplus pool by the father of the plaintiff only. It is only the said option of giving the land in surplus pool by the father of the plaintiff; which has been set aside in the suit filed by the

defendants. Therefore, the defendants are claiming the said land from the Surplus Department Authorities only by stepping in the shoes of the father of the plaintiff. The land would be deemed to have reverted to the father of the plaintiff if the surplus proceedings qua the said land are set aside. Therefore, when the land, which was given in surplus pool by the father of the plaintiff, gets released from the surplus proceedings, then the plaintiff shall automatically have his rights qua that land, in case the impugned decree in favour of the defendants is set aside. Therefore, the defendants cannot claim to have acquired any independent right to the suit land; only because of the intervening fact of giving the land in surplus by the father of the plaintiff. Needless to say that the defendants are not claiming the land as coming to them by way of any act of utilization of the said land by the Surplus Lands Department; after the same having been declared as surplus. Rather, the defendants challenged the surplus proceedings itself. Hence, if the proceedings are set aside, the land would revert to the original owner of the property, as was recorded before the surplus proceedings.

This Court also does not find any substance in the argument of learned counsel for the appellant/defendants that the independent suit for challenging the impugned decree was not maintainable and that the only remedy for the plaintiff would have been to file an application in the same suit. Although learned counsel for the defendants has relied upon the Division Bench judgment of this Court in **Gurdev Kaur** (supra), however, a perusal of the said judgment itself shows that the bar of separate suit is not applicable in case of decree obtained by way of fraud. The said Division Bench itself has saved the separate suit to re-open the consent/compromise decree if the same is based on fraud, coercion or mis-representation.

Therefore, in case, the fraud, coercion or misrepresentation in obtaining the impugned judgment and decree is pleaded and proved, then the bar of second suit is not applicable. The said bar is applicable only in case a person claims that the compromise was not lawful. Needless to say that there is a lot of difference between the plea of compromise not being lawful and there being a fraud and misrepresentation in obtaining the impugned decree. These two things cannot be put in the same basket. Hence, the separate suit filed by the plaintiff in this case, has rightly been entertained and rightly been allowed by the lower Appellate Court.

No other point was argued.

In view of the above, finding no merit in the present appeal, the same is dismissed. The Judgment and decree passed by the lower Appellate Court are upheld.

(RAJBIR SEHRAWAT)
JUDGE

24.1.2020

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No