

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

RSA No. 140 of 2012 (O&M)

Date of decision : January , 2020

Maya Devi

.....Appellant

Versus

Vijay Kumar and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Chanderhas Yadav, Advocate
for the appellant.

Mr. R.D. Yadav, Advocate
for the respondents.

LISA GILL, J.

Appellant – plaintiff is aggrieved of judgment and decree dated 28.03.2008 passed by the learned Additional Civil Judge (Senior Division), Rewari as well as judgment and decree dated 27.07.2011 passed by the learned Additional District Judge, Rewari, whereby the suit for declaration and permanent injunction filed by her stands dismissed.

Appellant – plaintiff filed a suit for declaration and permanent injunction seeking herself to be declared as owner in possession of the property in dispute as detailed in the plaint and restraining the defendants from interfering in her possession and in case they succeeded in taking possession, restoration of possession was sought. It is pleaded that common ancestor of the parties was Ramliya. Sanwal Singh and Jug Lal are two sons of Ramliya. The plaintiff was the only child of Sanwal Singh. The defendants are the sons of Jug Lal son of Ramliya. Sanwal Singh is claimed to have died some days prior to Diwali in the year 1999 in village Bathodi.

It is pleaded that the plaintiff was the sole legal heir of Sanwal Singh whereas the defendants were illegally claiming themselves to be the owners in possession of the suit property on the basis of judgment and decree dated 06.11.1993. The said decree dated 06.11.1993 is stated to have been fraudulently obtained by the defendants from her father Sanwal Singh by taking benefit of his illiteracy and by playing fraud upon him. Sanwal Singh, it is pleaded, never suffered decree dated 06.11.1993 in favour of the defendants in respect to the suit property. It is pleaded that the plaintiff came to know about the decree dated 06.11.1993 on 24.01.2000 when her husband obtained certified copies thereof. It is pleaded that Sanwal Singh was living separately from the defendants, who had no pre-existing rights in the suit property, therefore, in any case no compromise or settlement could have been effected between them. Furthermore, value of the land being more than ₹100/-, decree dated 06.11.1993 could not take effect without being registered in view of Section 17 of the Registration Act. Despite request, the defendants refused to accept the plaintiff's claim, therefore, the present suit was filed seeking judgment and decree dated 06.11.1993 and mutation No. 778 sanctioned on 22.03.1995 to be declared illegal, null and void.

Defendants resisted the suit. Written statement taking various preliminary objections was filed. The deceased Sanwal Singh, father of the plaintiff was admitted to be the owner in possession of the suit property before the passing of judgment and decree dated 06.11.1993, after which the defendants claimed to be the lawful owners in possession of the suit property. It is stated that the defendants and Sanwal Singh constituted a joint Hindu family. Sanwal Singh was residing with the defendants and was

looked after by them. The defendants claimed to have performed the last rites and ceremonies of Sanwal Singh. Decree dated 06.11.1993 is stated to be suffered by Sanwal Singh, out of his own free will in favour of the defendants and mutation was also sanctioned in this respect. It is denied that there was any concealment or fraud perpetuated by the defendants. As decree dated 06.11.1993 was passed on the basis of a compromise, registration under Section 17 of the Registration Act, it is stated, was not required. Dismissal of the suit was prayed for.

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is not joint owner in possession of the suit property as detailed in para No. 1 of the plaint?OPP.
2. Whether the decree dated 06.11.1993 and mutation bearing No. 778 dated 22.03.1995 are illegal, null and void not binding on the rights of the plaintiff and are liable to be set aside?OPP
3. Whether the plaintiffs are entitled for the relief of permanent injunction?OPP
4. Whether suit of the plaintiff is not maintainable in the present form? OPD.
5. Whether the plaintiffs have no locus standi to file the present suit? OPD.
6. Whether the plaintiff has no cause of action to file the present suit? OPD.
7. Whether the suit is barred by time? OPD
8. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record concluded that decree dated 06.11.1993 had been suffered by Sanwal Singh

out of his own free will and volition and the said decree was passed on the basis of the statement of Sanwal Singh admitting the claim of the plaintiff. Accordingly, suit filed by the plaintiff was dismissed. Appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Rewari vide judgment dated 27.07.2011. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned Courts below have grossly erred on facts and in law in dismissing the suit filed by the present appellant. The consent decree dated 06.11.1993, suffered by her father namely Sanwal Singh, in favour of the defendants, is illegal, null and void qua the rights of the appellant-plaintiff. It is further contended that the consent decree dated 06.11.1993, even if proved, cannot be given effect to without registration, as rights over immovable property exceeding the value of more than ₹100/- are sought to be created for the first time in the property, in favour of the defendants. The property, it is submitted was the self acquired property of Sanwal Singh. It is thus prayed that the present appeal be allowed and the judgements and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the appellant be decreed throughout.

Per contra, learned counsel for the respondents refutes the arguments as raised by learned counsel for the appellants and submits that both the learned Courts below have rendered concurrent findings of fact on the basis of evidence on record, which calls for no interference whatsoever in this regular second appeal. It is, thus, prayed that the present appeal be dismissed and the impugned judgements and decrees passed by the learned Courts below be upheld.

though the file with their able assistance.

Undisputed facts are that the common ancestor of the parties was Ramliya. Father of the plaintiff - Sanwal Singh was the real brother of Jug Lal i.e. father of the defendants. The plaintiff is the only child of Sanwal Singh. She is proved to have been married about 56 years prior to the filing of the suit and was living with her in-laws in village Gokalgarh. PW4 Rajinder Singh in his cross examination has candidly admitted that Maya Devi was living with her in-laws at village Gokalgarh. It is proved on record the Sanwal Singh was residing alongwith the defendants. It is further a matter of record that Sanwal Singh had a joint ration card with the defendants. PW1, the plaintiff herself, has admitted the joint ration card. PW5 Prithvi Singh – the plaintiff's husband has admitted the factum of Sanwal Singh having a joint ration card with the defendants. PW3 Murti sister of Sanwal Singh doubtlessly stated that Sanwal Singh was residing with her at the time of her death and had died about 2½ years prior to her deposition but apart from her bald assertion there is no evidence to indicate that Sanwal Singh was residing with her. PW3 has tried to explain the joint ration card of Sanwal Singh with the defendants, by stating that Sanwal Singh might have been registered alongwith the defendants only for the purpose of getting ration from the concerned department. PW4 Rajinder Singh denied having any knowledge about the joint ration card, though he accepted that the defendants had mortgaged the land with the bank for the purposes of a loan. The testimony of PW1, the plaintiff, is telling in itself. While stating that the land in dispute i.e. mushtarka land is that of her father and her uncle (Chacha), she stated that she came to know about decree dated 06.11.1993 after one month of the death of her father. Sanwal Singh is

pleaded to have died in the year 1995. The present suit was filed in February, 2000. PW1 was unable to give the description of the land in dispute.

It is proved by the evidence on record that decree dated 06.11.1993 was indeed suffered by Sanwal Singh on 06.11.1993. DW3 Sham Sunder, Record Clerk has proved the record in respect to the said decree. DW4 Sher Singh Arora, Advocate has clearly stated that he filed a written statement on behalf of Sanwal Singh admitting the claim of the defendants. PW4 further stated that he identified Sanwal Singh on 21.09.1993 and Sanwal Singh recorded his statement on oath before the court on 21.09.1993 in his presence. Written statement and the statement of Sanwal Singh were proved as Ex. DW4/A and Ex.DW4/B. Mutation No. 778 was sanctioned way back on 22.03.1995 in this respect and admittedly before the death of Sanwal Singh. The defendants have proved their possession over the suit property ever since. It is borne out from the record that Sanwal Singh remained alive for over two years after suffering decree dated 06.11.1993. It is rightly held by both the learned courts below that there is no question of any fraud or misrepresentation on the part of the defendants, on the basis of which decree dated 06.11.1993 was suffered.

Argument raised by learned counsel for the appellant that the decree in any case not being registered, is null and void qua the rights of the plaintiff, is clearly untenable in the given factual matrix and the said argument is rejected. It is to be noticed that insofar as the relation between the defendants and Sanwal Singh is concerned, the same is admitted. The defendants are the nephews (brother's sons) of the deceased. Learned counsel for the appellant has vehemently argued that the defendants had no pre-existing rights in the property in question. Therefore, the rights being

created for the first time, the compromise decree necessarily required registration. This argument is rejected being untenable because it is a settled position that where a person is proved to have even a semblance of a right, the courts would give effect to the family settlement. Learned counsel for the appellant is unable deny that as per the documentary evidence on record, the land in question devolved upon Sanwal Singh from his father Ramliya. In this respect, reference can gainfully be made to Ex.D14. The land in question was joint. Learned counsel for the appellant is unable to point out any evidence on record to indicate that decree dated 06.11.1993 was obtained in a fraudulent manner or that the said decree is null and void qua the rights of the plaintiff due to non-registration as per Section 17 of the Registration Act. It has been held by the Hon'ble Supreme Court in **Bachan Singh Vs. Kartar Singh and others, 2002(2) R.C.R (Civil) 495** that a consent decree passed by the Court is not required to be registered under the provisions of the Indian Registration Act.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law, is involved for consideration in this appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 28.03.2008 passed by the learned Additional Civil Judge (Senior Division), Rewari as well as judgment and decree dated 27.07.2011 passed by the learned Additional District Judge, Rewari which calls for any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

Jaunary , 2020

rts

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(Lisa Gill)

Judge