

S.No.101

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

RSA No.3326 of 2016 (O&M)

Date of Decision:04.03.2020

Anoop Singh (deceased) through LRs and othersAppellants

Vs.

Satpal Singh and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Surinder Gandhi, Advocate for the appellants.

Rajbir Sehrawat, J.(Oral)

This is second appeal filed by the unsuccessful plaintiffs challenging the concurrent judgments and decrees passed by the Courts below, whereby their suit for possession of the suit land and for declaring the earlier decree dated 18.12.1986 as null and void, was dismissed.

For convenience; the parties herein are being referred to as the plaintiffs and the defendants; as they were described in the original suit.

Shorn off unnecessary details, the brief facts are that the plaintiff/ appellants had filed a suit seeking possession of the suit land on the ground that their mother Brahmi Devi was the owner of the suit property. The plaintiffs are the legal heirs of their mother Brahmi Devi. Therefore, as per natural succession, they are entitled to inherit the estate of their mother. However, the defendants have entered into possession of the suit property on the basis of the decree dated 18.12.1986 passed in Civil Suit No.907 of 1986; which is claimed to have been suffered by their mother in favour of the defendants. However, the said decree is fraudulent and fabricated one. Their mother never appeared before any Court. She never engaged any counsel to file the written statement. Instead, the defendants had produced some other lady in place of their mother.

Otherwise also, their mother was not keeping good health and she was of unsound mind. Therefore, the said decree was fabricated by the defendants by impersonation. Plaintiffs came to know of this fraudulent decree on 25.04.2000. Hence, the same deserve to be set aside. The plaintiffs deserve to be restored the possession of the suit land.

The defendants resisted the suit filed by the plaintiffs. It was asserted by them that the decree was duly suffered by Brahmi Devi herself. She had engaged a counsel. Thereafter, she filed written statement and also made a statement by appearing before the Court; conceding the claim of the plaintiffs. It was denied that the thumb impression of Brahmi Devi on the documents were forged and fabricated. It was further denied that Brahmi Devi was of unsound mind; rather, it was asserted that she was keeping good health. Accordingly, the mutation in the revenue record was also rightly entered on the basis of the said judgment and decree. The defendants were enjoying the property as owners. It was further denied that the plaintiffs came to know of the decree only on 25.04.2000.

To prove their respective claims, the parties led their evidence. After considering the evidence, the trial Court dismissed the suit filed by the plaintiffs. Aggrieved against the same, the plaintiffs preferred appeal before the lower Appellate Court. However, even the Lower Appellate Court dismissed the appeal filed by the plaintiffs. Hence, the present appeal has been preferred.

While arguing the case, learned counsel for the appellants has submitted that the decree in question is, on the face of it, collusive in nature.

The suit was filed on 18.11.1986 and notice was issued to the defendants for

24.01.1987. However, thereafter, an application was filed by the plaintiffs for preponement of the date of hearing on 19.12.1986. Accordingly, the case was preponed for 22.12.1986 and on the same day, the decree was passed. Counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in **2012 AIR SC (Civil) 1974 – Smt. Badami (Deceased) by her L.R v. Bhali**, to contend that this kind of decree has to be taken as fraudulent and non-est. Still further, it is submitted that the decree was not got registered by the defendants, therefore, the decree cannot be taken to have conveyed any title in favour of the defendants. It is also submitted that; by leading cogent evidence, the plaintiffs have duly proved that the decree was fraudulent in nature. Hence, both the Courts below have wrongly passed the impugned judgments and decrees, dismissing their suit.

Having heard the learned counsel and having perused the record, this Court does not find any substance in the argument of the learned counsel for the appellants. So far as the point raised by the appellants qua the decree being collusive in nature is concerned, the facts on record show that the suit was filed on 18.11.1986. No doubt, in the first instance, notice was issued to the defendants, for 24.01.1987. However, later on, an application was filed by the plaintiffs stating therein that the parties had compromised the matter, therefore, the above case be preponed and be taken up. Thereafter, the file was taken up by the Court on 19.12.1986. On that date, the defendant- Brahmi Devi had filed a written statement and also made a statement before the Court, in which she had not denied the claim of the plaintiffs and the settlement between the parties. Accordingly, the decree was passed by the trial Court on 22.12.1986. In this situation, when the

person, who suffers the decree, is present before the Court, files written statement; and also makes a statement that he/she does not dispute the settlement with the plaintiffs, in that situation, the decree itself cannot, necessarily, be said to be collusive in nature. It is based upon the statements made by the parties and not based only on the pleadings of the parties. Hence, the decree; per-se; cannot be taken as fraudulent. The reliance of counsel for the appellants on the judgment of the Supreme Court rendered in **Badami's case (supra)**, is misconceived. In the said case, it was the person who had suffered the decree; herself had challenged the decree to be fraudulent with the assertions that she had never appeared before the Court, never filed any written statement and never made any statement. It was in that situation, that after appreciating evidence in that case, the Hon'ble Supreme Court had observed that the decree passed in that case was fraudulent and the defendants had every right to question the same. In the present case, the person who suffered the decree, namely, Brahmi Devi, never questioned the decree during her lifetime. It is only the legal representatives of Brahmi Devi who have filed the suit after 14 years of the decree. Hence, the judgment cited by learned counsel for the appellants is totally distinguishable on the facts of the present case.

A perusal of the file also shows that although the plaintiffs filed the suit yet they did not have the courage even to step into the witness box to prove their assertions and to face the cross-examination from the other side. They had appointed only their Attorneys who prosecuted the case and also appeared as witness. The Courts below have rightly held that the testimony of such Power of Attorney holder has to be taken as valid only

qua the facts which were in their personal knowledge. Beyond that, their testimony has to be taken irrelevant. The fact whether Brahmi Devi was present before the Court or not and whether she filed the written statement or not, as well as, the fact whether she made any statement before the Court, have not even been claimed by the Power of Attorneys holders to be based upon their personal knowledge. Their testimony does not establish any plea of alibi for Brahmi Devi for the said date. Hence, their testimony is totally irrelevant for the purpose of cause of the plaintiffs. It also deserves to be noticed that although the plaintiffs claim that the documents filed before the Court and the statements made before the Court at the time of passing the impugned decree are shown to be thumb marked by the said Brahmi Devi, but, those thumb impressions are not of Brahmi Devi, however, to prove this fact, the plaintiffs have not led any evidence whatsoever. They have not even examined any Expert to compare the thumb impression of Brahmi Devi with any admitted or proved thumb impression. Hence, this aspect also remains totally unproved on the part of the plaintiffs. On the other hand, the defendants duly examined DW2 Palwinder Singh; to prove the fact that Brahmi Devi had engaged the counsel who had filed written statement. Even the written statement filed by Brahmi Devi has been led in evidence as Ex.DW2/A and the statement made before the Court in that suit has been proved on record as Ex.D3. Therefore, it is rather the defendants who have positively proved the fact that the said Brahmi Devi did appear before the Court and duly affixed her thumb impression on the written statement and the statement made before the Court. Therefore, the factum of alleged fraud has been otherwise also disproved in this case.

Although the plaintiffs have also claimed that their mother was of unsound mind at the relevant time, however, even on this point any evidence has not been led. Therefore, there could not have been any reason for the trial Court to assume that Brahmi Devi was not of sound mind at the relevant time.

This Court also finds that the finding recorded by the Court below qua the suit being time barred; is also well reasoned. Undisputedly, the decree was passed in the year 1986, whereas, the suit has been filed only in the year 2001, after expiry of about 15 years. Although the plaintiffs claimed that they came to know about impugned decree and the fraud committed by the defendants only on 25.04.2000, however, no cogent and consistent evidence has been led on this point. The plaintiffs from the very beginning knew the fact that their mother was owning certain land. They were also not in possession of the suit land; of which they are seeking possession through the suit. Therefore, it is not reasonable to assume in this situation, that they would not come to know of deprivation of their rights; qua the suit property left behind by their mother; for a long period of 15 years. Hence, this Court does not find any irregularity even in the finding qua the suit being time barred.

Although the counsel for the appellants has submitted that the decree requires registration and the same has not been registered, therefore, the decree does not transfer any title in favour of the defendants, however, this argument is also liable to be rejected. Firstly, the suit filed by the plaintiffs itself has been held to be time barred and therefore, non-maintainable. Hence, any question on the title of the defendant on any

ground; whatever; is otherwise irrelevant. Even taking into consideration the argument as such, this would have been a mixed question of law and facts as to what kind of rights and qua which properties, such rights were being transferred by the person through the said decree suffered by her. However, no such cogent evidence has been led on file to prove the factual gamut to support the assertion that the decree required necessary registration. Needless to say that all kinds of the decrees do not require registration as such. Hence, this argument of the counsel for the appellants also deserve to be noted only to be rejected.

No other argument was raised.

In view of the above, finding no merit in the present petition, the same is dismissed.

March 04, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No