

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

RSA-3782-2016 (O&M)
Date of Decision:6.10.2020

Bhupinder Singh ... Appellant

Versus

Gurmail Kaur and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

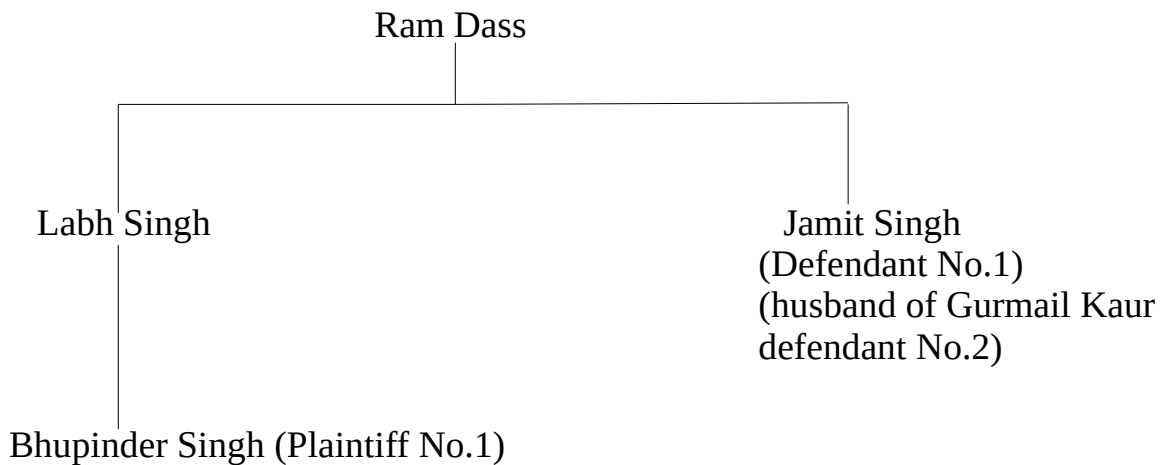
Present:- Mr. Malhar Singh Dhami, Advocate for the Appellant.

Mr. Vijay Lath, Advocate and
Mr. Naveen Sharma (Moudgil), Advocate,
for respondents No.1 and 2.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. Bhupinder Singh/plaintiff (hereinafter referred to as '*plaintiff/appellant*') has preferred this appeal challenging judgment and decree dated 14.1.2016 passed by learned Additional District Judge, SAS Nagar, Mohali, whereby the said Lower Appellate Court has reversed the judgment and decree dated 24.7.2013 passed by learned Civil Judge (Junior Division), SAS Nagar, Mohali in favour of the plaintiff/appellant Bhupinder Singh.
2. Before proceeding further, it would be beneficial to bear in mind a pedigree table as may be discerned from the pleadings as noticed in the judgment under appeal, which is being drawn as follows:



3. The plaintiff/appellant Bhupinder Singh alongwith his mother Harbans Kaur, widow of late Labh Singh, filed a suit seeking declaration to the effect that the judgment and decree dated 18.9.1997 passed by learned Civil Judge (Junior Division), Kharar in favour of defendant-Jamit Singh (hereinafter referred to as '*defendant/respondent*') had been obtained fraudulently and by concealment of material facts and documents and was thus illegal, null and void having no effect on the rights and exclusive ownership of the plaintiffs and of the performa respondents i.e. the successors of Labh Singh qua the said property. The aforesaid property (referred to as property 'A'), was described as a house in *abadi* of Village Manauli bounded in the following manner:

East:- Street Share-am

West:- Bhushir Khan

North:- Bhoora Khan & Munshi Ram etc.

South:- Kuldip Singh and Gurmeet Singh

4. Another declaration was sought as regards the joint *Abadi* house (referred to as property 'B') to the effect that the said house had been sold jointly by Ram Dass, Labh Singh and Jamit Singh vide sale deed dated 17.4.1980 to Baldev Singh and Gurdev Singh.

5. A third declaration as regards a joint *abadi* Bara house situated in Village Manauli, hadbast No.270, measuring 3 biswa comprised in Khasra No.1505 (referred to as property 'C') to the effect that the said property had been exchanged with property 'A' by mutual compromise and had been partitioned amongst Labh Singh and Jamit Singh by way of a judgment and decree dated 25.10.1989 passed by learned Sub Judge 1st Class, Kharar. A declaration was also sought that after demise of Labh Singh, the property i.e. suit property 'A' exclusively devolved upon his successors i.e. Bhupinder Singh, Harbans Kaur, Karamjit Kaur and Kuldeep Kaur and that the aforesaid ladies had relinquished their share in the said property in the favour of plaintiff/appellant Bhupinder Singh.
6. The plaintiffs had set up a case that all the aforesaid three properties i.e. properties 'A', 'B' and 'C' were earlier owned by Ram Dass, who had two sons namely Labh Singh and Jamit Singh. It was asserted that property 'A' is situated within the *abadi* area of Village Manauli, Tehsil Kharar, District Ropar and that property 'C' bears a Khasra number i.e. Khasra No.1505 measuring 3 biswa. It was also averred by the plaintiffs that although property 'B' was also a joint *abadi* property but the same stood sold jointly vide sale deed dated 17.4.1980. The plaintiffs asserted that qua the remaining two properties i.e. property 'A' and property 'C' a family settlement had been effected amongst the two sons of Ram Dass i.e. amongst Labh Singh and Jamit Singh in the year 1989 and that in terms of the said family settlement a decree was passed by the Court of learned Sub Judge 1st Class, Kharar on 25.10.1989, as per which property 'A' exclusively came to the share of Labh Singh (predecessor) of plaintiff/appellant Bhupinder Singh, whereas property 'C' went exclusively to Jamit Singh (defendant/respondent), who

subsequently transferred the same in favour of his wife Gurmail Kaur (defendant No.2). The plaintiffs thus alleged that despite the said judgment and decree dated 25.10.1989, the defendant Jamit Singh filed a suit i.e. Civil Suit No.8 dated 6.1.1995 and obtained a judgment and decree dated 18.9.1997 from the Court of learned Civil Judge (Junior Division), Kharar for separate possession by way of $\frac{1}{2}$ share of the property described as property 'A' i.e. a house situated within the *abadi* of Village Manauli while concealing the factum of family settlement of the year 1989.

7. The suit was opposed by the defendants wherein a specific stand was taken to the effect that the property mentioned as property 'A' was not the subject matter of the civil suit of 1989 in which judgment and decree dated 25.10.1989 was passed. The parties were put to proof on the following issues:

- “1. Whether the plaintiff is entitled to declaration as prayed for ? OPP
2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
3. Whether the judgment and decree passed by Ms. Seema Dhillon, PCS, Civil Judge (Jr. Divn.), Kharar in favour of Jamit Singh (defendant no.1) was obtained by defendant no.1 illegally, fraudulently and by concealment of material facts? OPP
4. Whether Property B was sold by Ram Das, Labh Singh and Jamit Singh? OPP
5. Whether suit properties i.e. Property A and Property C were mutually by compromise, exchanged and partitioned between Labh Singh and Jamit Singh in civil suit No.443 dated 15.6.89 in judgment and decree dated 25.10.89? OPP
6. Whether suit of plaintiff is not maintainable? OPD
7. Whether suit of the plaintiff is hit by principal of Res-judicata? OPD
8. Relief.”

8. In order to establish his case, the plaintiff/appellant Bhupinder Singh himself stepped into the witness box as PW-2 and examined PW-1 Avtar Khan.
9. On the other hand, the defendants in order to establish their stand examined defendant No.2-Gurmail Kaur as DW-1.
10. The learned Lower Court, upon appraisal of the evidence, returned its findings on issue Nos.1 to 3 in favour of the plaintiffs and against the defendants. The remaining issues were also decided in favour of the plaintiffs and consequently the suit was decreed vide judgment dated 24.7.2013 passed by learned Civil Judge (Junior Division), SAS Nagar, Mohali.
11. The defendants (wife and LRs of Jamit Singh) preferred an appeal challenging aforesaid judgment and decree dated 24.7.2013, which was accepted vide impugned judgment and decree dated 14.1.2016 passed by learned Additional District Judge, SAS Nagar, Mohali and the judgment and decree dated 24.7.2013 passed by learned Civil Judge (Junior Division), SAS Nagar, Mohali was set aside. The plaintiffs aggrieved by the aforesaid judgment dated 14.1.2016 passed by learned Additional District Judge, SAS Nagar, Mohali have preferred the instant appeal.
12. The learned counsel for the plaintiff/appellant submitted that the lower Appellate Court fell in error in reversing a well reasoned judgment passed by learned Civil Judge (Junior Division), SAS Nagar, Mohali and that from the facts on record, it is clearly established that the defendant Jamit Singh had filed a civil suit on 6.1.1995 seeking possession by way of partition in a clandestine manner and by concealing the factum of family settlement and the earlier decree dated 25.10.1989 and had thus fraudulently obtained a decree. It has thus been submitted that the said decree of 18.9.1997 passed by

learned Civil Judge (Junior Division), Kharar deserves to be set aside being a result of fraud and concealment.

13. On the other hand the learned counsel representing the defendant/respondents has submitted that the property mentioned as property 'A' i.e. a house situated in the *Abadi* of Village Manauli was nowhere a part of judgment and decree dated 25.10.1989 passed by learned Sub Judge 1st Class, Kharar and, as such, it cannot be said that by not referring to the said decree in the civil suit of 6.1.1995, the defendant had made any material concealment.
14. The learned counsel for respondents further submitted that the plaintiff/appellant Bhupinder Singh and his mother Harbans Kaur (defendant No.3 in the instant case) were very much a party in the aforesaid civil suit dated 6.1.1995 filed by Jamit Singh (defendant in instant case) and that the said suit was duly contested by the said defendants and, as such, there is no question of any fraud or concealment particularly when the judgment dated 18.9.1997 passed in said suit had attained finality. The learned counsel for the defendant/respondents thus prayed for dismissal of the present appeal.
15. I have considered rival submissions addressed before this Court.
16. A perusal of the plaint of the instant suit and also of the suit dated 6.1.1995 shows that the property, which is described as property 'A' in the instant suit, is the same very property which was the subject matter of the suit dated 6.1.1995. The heading of the plaint dated 6.1.1995 reads as follows:

“Suit for separate possession by way of partition of ½ share of the house bounded as under:-

East:- Street Share-am

West:- Bhushir Khan

North:- Bhoora Khan & Munshi Ram etc.

South:- Kuldeep Singh and Gurmeet Singh”

17. The aforesaid suit was contested and was decreed vide judgment and decree dated 18.9.1997. Although the present plaintiff/appellant had filed an appeal challenging the aforesaid judgment and decree dated 18.9.1997 but the same was subsequently dismissed in default on 13.10.1999 and consequently the judgment dated 18.9.1997 had since attained finality.
18. The material question before this Court is as to whether the defendant/respondent Jamit Singh, while filing the aforesaid civil suit dated 6.1.1995, had made any concealment which could be termed as a material concealment or be termed as a fraud. Since the learned counsel for the plaintiff/appellant has vehemently argued that while filing the aforesaid civil suit dated 6.1.1995 the plaintiff therein (defendant/respondent Jamit Singh in the present case) had nowhere referred to the earlier judgment and decree dated 25.10.1989, it will be apposite to refer to the plaint dated 15.6.1989 and the judgment and decree passed thereupon on 25.10.1989.
19. A perusal of the heading as well as prayer of civil suit No.443 dated 15.6.1989 (Ex.P-11), which was decreed on 25.10.1989 shows that the same was filed by Gurmail Kaur wife of Jamit Singh against Labh Singh (Predecessor of Bhupinder Singh) and Jamit Singh, wherein the following declaration was sought:

“ Title

Smt. Gurmail Kaur wife of Jamit Singh son of Shri Ram Dass, resident of Village Manauli, Teh. Khara, District Ropar. Plaintiff

Vs.

1. Labh Singh son of Shri Ram Dass, resident of Vill. Manauli, Teh. Kharar, District Ropar.
2. Jamit Singh son of Ram Dass, resident of Village Manauli, Teh.Kharar, District Ropar. Defendants

Heading

Suit for Declaration to the effect that the Plaintiff is the owner in possession of land measuring 0B-3B, comprised in Khata No.131/141, Khasra No.1505 (0-3), situated in the area of Village Manauli, H.B. No.270, Teh. Kharar, District Ropar, as per Jamabandi for the year 1983-84.”

Prayer

It is, thus, prayed that the Plaintiff’s suit for Declaration to the effect that the Plaintiff is the owner in possession of land measuring 0-3B Biswas, comprised in Khata No.131/141, Khasra No.1505 (0-3), situated in the area of Village Manauli, H.B. No.270, Teh. Kharar, District Ropar, vide Jamabandi for the year 1983-84, be decreed in favour of the Plaintiff and against the defendants in the interest of justice.”

20. The aforesaid suit was decreed on the basis of the statements made by the defendants on 25.10.1989. The judgment dated 25.10.1989 (Ex.P-13) reads as follows:

“Statements of defendants and counsel for plaintiff recorded. Heard. Plaintiff is the wife of defendant No.2 Jamiat Singh who is the brother of defendant No.1 Labh Singh. Defendant No.1 took 1/2 share of defendant No.2 in the abadi house and gave up his 1/2 share in Khasra No.1505. Thus defendant No.2 became owner in possession of Khasra No.1505. Possession of suit land was given to the plaintiff by the defendants in June, 1968 as owners in a family settlement. The defendants are now disputing her title. She wants a declaration that she is the owner in possession. In joint written statement defendants admitted her claim. They made similar statements in Court. In view of this, I passed a decree of declaration that plaintiff is the owner in possession of land measuring 08-38, comprised in Khata No.131/141, Khasra No.1505 (0-3) situated in the area of village Manauli, H.B. No.270, Tehsil Kharar, District Ropar as per jamabandi for the year 1983-84. Parties to bear their own costs. Decree sheet be prepared. File be consigned to the Record Room.”

21. A perusal of the aforesaid heading and prayer of suit No.443 dated 15.6.1989 (Ex.P-11) as well as judgment dated 25.10.1989 (Ex.P-13) shows that the prayer made in the said suit was only pertaining to the land measuring 0-3B Biswas, comprised in Khata No.131/141, Khasra No.1505 (0-3) and even the decree was passed in respect of the said property only. No doubt in the judgment dated 25.10.1989 there is a reference to a house in abadi in which Labh Singh is stated to have taken $\frac{1}{2}$ share from Jamit Singh but there is no description, identification or reference whatsoever of said abadi house in the plaint. Further neither any prayer was made in respect of any such abadi house nor is there any decree qua such abadi house so as to say that earlier suit pertained to same very property which is described by boundaries in the present suit.
22. In these circumstances, Jamit Singh (defendant/respondent), while filing the suit subsequently in the year 1995 i.e. suit dated 6.1.1995 was not required to refer to the said earlier judgment and decree dated 25.10.1989 and by not referring the said earlier judgment and decree dated 25.10.1989, it cannot be said that the same would amount to material concealment. Further, since the present appellant/plaintiff was duly represented in the earlier suit filed by Jamit Singh in the year 1995 and had contested the same without raising any plea of fraud, it cannot be said that the respondent/defendant has committed any fraud or any material concealment so as to justify setting aside of the aforesaid judgment and decree dated 6.1.1995. The matter pertaining to partition of property in question having been set at rest by way of judgment dated 18.9.1997, which has attained finality, the same cannot be agitated again by appellant/plaintiff so as to claim that he is exclusive owner of said property. It is thus clearly evident that the lower Court fell in error in

decreeing the suit, which has been duly rectified by the Lower Appellate Court by accepting the appeal filed by the defendant Gurmail Kaur wife of Jamit Singh and Jamit Singh (through his LRs) and by setting aside the judgment of the lower Court while dismissing the suit.

23. This Court does not find any infirmity in the findings of reversal as recorded by the learned lower Court in its judgment and decree dated 14.1.2016 passed by learned Additional District Judge, SAS Nagar, Mohali and the same are hereby affirmed.
24. Further, this Court also finds that the suit filed by appellant/plaintiff Bhupinder Singh and his mother was time barred inasmuch as by way filing the instant suit in the year 2011, they sought to challenge a judgment and decree passed in the year 1997, which was much beyond the limitation of three years as prescribed, particularly since the plaintiffs cannot feign ignorance about filing of civil suit No.443 in the year 1989 as their predecessor i.e. Sh. Labh Singh, father of plaintiff/appellant Bhupinder Singh was duly arrayed as a defendant, who was duly represented by an advocate, as would be evident from the fact that the presence of counsel for the parties has been recorded in judgment dated 25.10.1989. Infact a perusal of the judgment dated 25.10.1989 also shows that a joint written statement had been filed on behalf of the defendants. Thus the plaintiff/appellant cannot take up the plea of ignorance about judgment and decree dated 25.10.1989.
25. Consequently, the findings of the Lower Appellate Court even as regards the suit being barred by limitation are also affirmed. No other point has been

raised or urged before this Court. Finding no merit in the present appeal, the same is hereby dismissed with costs.

26. Decree sheet be prepared accordingly.

6.10.2020

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No