

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

DATE OF DECISION : 17th FEBRUARY, 2020

(1)

RSA No.3834 of 2016 (O&M)

Deva Singh (Deceased) through LRs

.... Appellant

Versus

Balbir Singh & others

.... Respondents

(2)

RSA No.4656 of 2016 (O&M)

Deva Singh (Deceased) through LRs

.... Appellant

Versus

Mastan Singh (Deceased) through LRs & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Arun Jain, Senior Advocate with
Mr. S. S. Dinarpur, Advocate and
Mr. Varun Parkash, Advocate for the appellant.

Mr. Vivek Suri, Advocate
for the respondent No.2-Caveator.

* * * *

RAJBIR SEHRAWAT, J. (Oral)

1. This order shall dispose of aforesaid two appeals.
2. Both these appeals have been filed by the plaintiff, challenging the judgment and decree of reversal passed by the lower appellate court, whereby, while reversing the judgment and decree passed by the trial court, the suit filed by the plaintiff has been ordered to be dismissed.
3. For the convenience, the parties are being referred to herein as plaintiff and the defendant; as they were described in the original suit.

4. Brief facts, giving rise to both the appeals, are that the plaintiff filed suit for declaration of decree dated 07.06.1982 passed in Civil Suit No.236 of 1982; in favour of defendants No.1 to 3, suffered by father of the plaintiff, as well as, the subsequent sale deeds executed by defendant No.1, as null and void. It was pleaded in the suit that Sadhu Singh, the father of the plaintiff, was owner in possession of the land in dispute. The same was inherited by him from his father Molu. The plaintiff was the only son of Sadhu Singh. On the death of his father Sadhu Singh in the year 1987, he was to inherit the property. However, during his lifetime Sadhu Singh had suffered a decree dated 07.06.1982 in favour of defendants No.1 to 3, who are the sons of the plaintiff, to the exclusion of plaintiff and defendants No.16 to 18. Subsequently, the mutation No.603 was sanctioned in favour of defendants No.1 to 3 on 27.12.1982 on the basis of the said decree. The land in question is ancestral and belong to Joint Hindu Family and Sadhu Singh had no right to suffer the decree in favour of defendants No.1 to 3. Although the decree is stated to be based on the family settlement, however, no family settlement had ever taken place before Sadhu Singh had suffered the decree in favour of defendants No.1 to 3. In fact, defendant No.1, who was working on his own behalf as well as on behalf of defendants No.2 and 3, had exercised undue influence on Sadhu Singh; who was very old and weak person. On the basis of the said decree, the defendants No.1 to 3 have further sold the land. Therefore, the said sale deed is also illegal and not binding upon the rights of the plaintiff.

5. After issuance of the notice, the defendants No.1 to 3 were proceeded *ex parte*. Defendants No.4 to 7 and 13 filed a contesting

written statement asserting that the property in the hands of Sadhu Singh was self-acquired property. The Joint Hindu Family or the coparcenery was not in existence. Still further, it was submitted that Sadhu Singh had engaged lawyer and also appeared in the court and had admitted the claim of the defendants in the suit. Thereafter, the decree was passed by the court. It was pleaded that defendants No.16 to 18, in any case, can not be members of the Joint Hindu Family. After the decree, mutation was also entered in favour of defendants No.1 to 3. The defendants No.2 and 3 were minor at that time, and were not in a position to influence anyone. Even the defendant No.1 was of very young age, therefore, he was also not in a position to exercise any influence over his grandfather. After the land has come to the defendants No.1 to 3 through said decree, they had further sold part of it. The plaintiff was aware of the decree right from the year 1982. Despite that, suit is not filed in time. Hence, the suit filed by the plaintiff itself is time barred.

6. Besides this, the defendants No.8 to 11 also filed their separate written statement claiming to be *bonafide* purchasers from defendant No.1. The above said pleadings, on merits, were also asserted by these defendants. Similar pleadings were raised by defendants No.14, 15 and 16 to 18 in their written statement filed separately.

7. The parties led their respective evidence in support of their assertions. After considering the evidence led on file, the trial court decreed the suit. The trial court held that the suit property was ancestral property in the hands of Sadhu Singh. Therefore, he could not have suffered any decree. To arrive at this conclusion, the trial court had relied upon the revenue record showing the continuity of the lineage in

succession. Still further, it was observed by the trial court that the daughters of the plaintiff were neither coparceners nor entitled to any share in joint family property. Regarding the limitation, the trial court observed that since the suit property was ancestral in nature, in which the plaintiff had a right by birth, therefore, the suit filed by him was based on title, and hence, there was no limitation. Accordingly, the trial court held that since the defendants could not establish their adverse possession, therefore, there is no question of the suit being barred on account of limitation. Similarly, the plea of purchaser/defendants of being *bonafide* purchasers, was also rejected by the trial court.

8. Aggrieved against the said judgment and decree, the defendants, who claimed to be *bonafide* purchasers from defendant No.1, filed two separate appeals. The lower appellate court recorded a finding that the suit property was not ancestral in nature. No excerpts have been produced before the trial court to establish the nature of the suit property to be ancestral one. Hence, Sadhu Singh was the sole proprietor of the suit property. It is further observed that after suffering the decree in the year 1982, Sadhu Singh remained alive till 1987. He had never challenged the decree in question. On the point of limitation, the lower appellate court has held that since the decree was passed in the year 1982 and the suit has been filed in the year 1997, therefore, the suit is hopelessly time barred. To support the conclusion of the suit being time barred, the lower appellate court has recorded finding that the plaintiff himself was present at the time of entry of mutation in favour of defendants No.1 to 3 on the basis of the impugned decree. Not only this, after the decree was suffered in favour of the defendants No.1 to 3, then

defendant No.1 had entered into an agreement to sell in the year 1983. The plaintiff was witness to that agreement to sell as well. Therefore, right from the beginning, the plaintiff was having knowledge of the decree. Since the plaintiff is seeking the declaration of the decree being void, therefore, he was required to file the suit within three years. Hence, the suit filed by the plaintiff is time barred. Aggrieved against that judgment and decree, disposing of two appeals filed by the purchaser/defendants, the present two appeals have been filed; against the common judgment and decree passed by the lower appellate court.

9. While arguing the case learned counsel for the plaintiff/appellant has submitted that since the plaintiff has been able to prove that originally Jati Ram was recorded as owner of the suit land, having inherited from his great-grandfather. After Jati Ram, the land was inherited by his son Molu. From Molu the land had come to Sahdu Singh and his brothers; in equal shares. Therefore the suit land, in the hands of Sadhu Singh, shall be ancestral property. To prove this line of succession, the plaintiff has duly proved on file the revenue records. Hence, the lower appellate court has faltered in recording a finding that the suit property was not ancestral one.

10. So far as the point of limitation, is concerned, the counsel for the appellant has submitted that since the suit property was ancestral property, in which the plaintiff had right by birth; and his father Sadhu Singh had no right to transfer the suit property by a decree, therefore, the suit filed by the plaintiff is qua asserting his title only. Being a suit based upon title, there is no limitation prescribed as such. In any case, the limitation in the case can be said to have started running from the date

when the possession of the defendants would have become adverse to the title of the plaintiff. There is nothing led in evidence by the defendants qua their adverse possession. Hence, the finding recorded by the lower appellate court qua the suit being time barred, is totally non-sustainable.

11. On the other hand, counsel for the defendants/respondents has submitted that the necessary evidence to show the character of the suit property; to be the ancestral property; has not been led on file. Still further, it is submitted that merely because the property is coming from three generations, is not sufficient to prove the character of the suit property to be ancestral in nature. There has been huge variation in the quantity of the land coming from one ancestor to another. The same has not been explained anywhere. Still further it is submitted that, in any case, the defendants are the *bonafide* purchasers. The plaintiff has been in knowledge of the decree right from the beginning. He has even been a signatory as attesting witness to one of the agreement to sell, through which the property was purchased by defendant No.5-Mastan Singh from defendant No.1. Therefore, it does not lie in the mouth of the plaintiff to question the decree and the sale deeds. Since, right from the beginning, the plaintiff has been aware of the decree, as well as, the sale deeds, therefore, the suit filed by the plaintiff after such a long time has rightly been held to be time-barred by the lower appellate court. Therefore, the present appeals deserve to be dismissed.

12. Having heard learned counsel for the parties and having perused the record, this court does not find any substance in the argument of the learned counsel for the appellant. The most important question to be considered in this case is the nature of the suit property. The lower

appellate court has held the property to be self acquired property in the hands of Sadhu Singh. No doubt, the plaintiff has shown a line of succession by generations, to establish the nature of the suit property to be ancestral, however, this itself would not be sufficient to establish the character of the suit property as ancestral one. Undisputedly in the year 1905-06 the land in the line of succession was 154 bighas 2 biswas. However, when the land comes from Jati Ram to Molu in the year 1911-12 it is shown to be 292 bighas and 12 biswas. Therefore, the corpus of the property has been shown to be almost the double. There is no explanation for this increase in the quantity of the land. Again in the year 1911-12 the land is shown to be 262 bighas; which is about 30 bighas less than the earlier holding. Not only this, when the land is shown to have come from Molu to Sahdu Singh, in the first instance, no quantity of land is mentioned. However in the jamabandi for the year 1943-44, the total holding coming from Molu to Sadhu Singh is shown to be 137 bighas 13 biswas. Therefore, the land has been again reduced to half. Even if the succession of Molu is taken to be natural; then also 262 bighas land was to come to his six brothers. Therefore, Sadhu Singh could not have got 137 bighas 13 biswas by inheritance. This shows that the land was increased in the hand of Sadhu Singh; by means other than the natural succession. Not only this, the lower appellate court has rightly recorded that in various documents of succession, being relied upon by the plaintiff, either the khasra numbers are not matching; or the quantity of the land is not mentioned. In that situation, the only method of proving the character of the property to be ancestral one, could have been; by leading in evidence the excerpts from the revenue record.

However, no such attempt has been made by the plaintiff. Hence, this court does not find any illegality or perversity qua the finding record by the lower appellate court; that the land has not been proved to be ancestral in nature.

13. On the point of limitation also, it is obvious that the decree in question is suffered by father of the plaintiff in favour of the sons of the plaintiff, by excluding two daughters of the plaintiff. Hence this appears to be a transaction of convenience, executed with due knowledge and concurrence of the plaintiff. This fact has been established on record by the mutation Exhibit D-20, which was entered into in favour of defendants No.1 to 3 on the basis of the said decree. The proceedings of this mutation show that it was the plaintiff only who had produced that decree before the revenue officers for entry of the mutation in favour of his sons, i.e., the defendants No.1 to 3. Not only this, as mentioned above, after getting the land through decree, the defendant No.1 executed an agreement to sell, Exhibit D-9, in favour of defendant No.5-Mastan Singh. The plaintiff himself is a signatory; as attesting witness; to the said agreement to sell. Although, the plaintiff tried to dispute his signatures on the said agreement, however, his signatures have been duly proved on record by the Handwriting Expert. Therefore, it is established on record that the entire happenings were in the knowledge of the plaintiff right from the beginning, rather; were being conducted with his express consent and participation. In that situation, if the plaintiff was to file a suit for declaration of the decree as void; for any reason, limitation would obviously be, three years. However, the suit has been filed after about 15 years of the date of the decree and after about 10 years of the

death of Sadhu Singh who suffered this decree in favour of defendants No.1 to 3. Therefore, this court does not find any illegality in finding of the lower appellate court on the point of limitation, as well.

14. No other argument was raised. No substantial question of law has been pointed out by the counsel for the appellant before this court.

15. Hence, this court does not find any illegality or perversity in the judgment and decree passed by the lower appellate court.

16. In view of the above, finding no merit in both these appeals, the same are dismissed.

17th FEBRUARY, 2020
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>