

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

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**RSA No. 4593 of 2019 (O & M)
Date of decision : 31.1.2020**

Mangal Singh (deceased) through LRs **.....Appellants**
Vs.

Mann Singh and others **.....Respondents**

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Sudeep Mahajan, Advocate, for the appellant

Rajbir Sehrawat, J. (Oral)

This second appeal is filed by the unsuccessful plaintiff for challenging the judgment and decree, passed by the Courts below, whereby the suit filed by the plaintiff/appellant; for declaring the judgment and decree passed in Civil Suit No. 148 dated 15.6.1979; as well as; the consequent mutation, as illegal; was dismissed.

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

Shorn of the unnecessary details, the facts involved in this case are that the suit was filed by the plaintiff claiming that he and his brother Amrik Singh were the owners in possession of the suit on the basis of earlier judgment and decree dated 24.1.1979. However, in the year 2010, the mutation No. 922 has been entered in favour of the defendants on the basis of another decree dated 17.12.1979. Thereafter, the plaintiff came to know that some decree had been passed against him. It has been pleaded by the plaintiff that at the time of passing of the impugned decree dated 17.12.1979, he was minor.

No Court guardian was appointed for the plaintiff in those proceedings before passing the impugned decree. Even after getting majority, the decree never come to his knowledge till the year 2010, as mentioned above. Hence, the decree and the consequent mutation be set aside.

The suit was contested by the defendants claiming that the plaintiff and the defendants are the successors of Bhagat Singh. Besides them, one Mansa Singh, who was also son of Bhagat Singh, has not been impleaded as party in the suit. Not only this, even the real brother of the plaintiff, Balwan Singh, has not been impleaded as party. The plaintiff and his brother had wrongly obtained the earlier decree dated 24.1.1979. Thereafter, the defendants had filed suit for possession qua the land measuring 11 *bighas* 10 *biswas*. Amrik Singh; the elder brother of the plaintiff, had appeared on his own behalf, as well as; the guardian of the present plaintiff. In that suit, a compromise was effected between the parties. The said compromise was duly signed by Amrik Singh and Balwan Singh; both elder brothers of the plaintiff, on their own behalf, as well as; the guardian of the plaintiff. Accordingly, compromise decree was passed; apportioning the land between the parties. Even as per that decree, the plaintiff was given more benefit. The plaintiff and his brothers were given 6 *bighas* of land out of 11 *bighas* 10 *biswas*. The said compromise was agreed and entered into by the brothers of the plaintiff because they were fully aware that the earlier decree dated 24.1.1979 obtained by them; was illegal, null and void. Accordingly, the dismissal of the suit was prayed for.

The parties led their evidence.

The plaintiff examined himself as PW1 and Darshan Singh,

Assistant Office of *Kanungo* as PW2, who proved the mutation No. 922 as Ex.PW2/A. Besides this, other documents qua the age of the plaintiff as well as *jamabandis* from the year 1973 to 2008 were led in evidence. However, the judgment and decree dated 24.1.1979, on the basis of which, the claim of the plaintiff to title was based, was not proved on record. The said document is only marked as Mark PX. On the other hand, the defendants led their evidence and besides proving other documents, they proved *Rojnamcha* dated 30.9.1995, 16.5.1996 and 17.8.2006, whereby the suit land was dealt with in the revenue record, as Ex.D2/A to D2/D. Similarly, a Registry No. 2935 dated 26.6.1987 was also proved as Ex. AW3/A.

After appreciating the evidence on record, the trial Court dismissed the suit filed by the plaintiff; mainly on two counts; firstly, it held that the compromise decree was entered into; and in that decree the plaintiff was duly represented by his real brothers, who had no interest adverse to the interest of the plaintiff, who claimed to be minor at that time. Secondly, it was held that since the plaintiff himself has been a signatory to the document Ex.D2/A, which is of 1996 and which talks about the suit land also; and under which the defendants were getting their share as well, therefore, the plaintiff could not take the plea that he was not aware of the decree dated 17.12.1979 dealing with suit land. Accordingly, the suit was also held to be time barred.

While arguing the case, learned counsel for the plaintiff/appellant has submitted that since the plaintiff was minor at the relevant time, therefore, as per the provisions contained in Order 32 CPC, no suit could have been decreed against the plaintiff as such. It is further submitted that the finding recorded by the Court below that the plaintiff was not adversely effected, is

factually incorrect. Since, earlier the plaintiff was getting the entire land along with his two more brothers and in subsequent decree, part of the said land has gone to share of the defendants, therefore, it cannot be said that the plaintiff was not to put to disadvantage in the subsequent decree. Accordingly, it is submitted that the decree passed without appointment of the Court guardian is bad. Learned counsel has relied upon the judgments in 'Amrik Singh etc. v. Karnail Singh etc., 1974 AIR (Punjab) 315', 'Firm Prem Sagar Bahadur Kumar v. Shrimati Durga Devi and others; 1977 (1) RCR (Rent) 203 (P & H), 'Murugan and others v. Kesava Gounder (ded) through LRs and others, 2019(2) CivCC 181 (SC), 'Jarnail Singh and others v. Smt. Naranjan Kaur and others, 2011 (4) CivCC 102 (P & H)' and 'Daya Singh and another v. Gurdev Singh (ded) by LRs and others; 2010 AIR (SC) 3240' to support his contention.

It is further argued by learned counsel for the plaintiff that the finding recorded by the Courts below qua the limitation also, are not sustainable in law. The document of mutation No. 922 itself shows that the defendants themselves have not pleaded the impugned decree before 2009; and for the first time, the mutation was entered on the basis of the said decree dated 17.12.1979 in the year 2010. Therefore, it cannot be presumed that the plaintiff had the knowledge of the decree before that. The plaintiff has rightly asserted that the plaintiff came to know of the decree only when the same was put up by the defendants for getting the mutation in their favour. By relying upon the judgments of the Supreme Court in **Murugan and others** and **Daya Singh** (supra), it is further contended that the limitation would start running only when the rights of the plaintiff were threatened. Therefore, the plaintiff rightly

filed the suit when his rights were put under threat by way of mutation in question.

Having heard learned counsel for the appellant and having perused the file, this Court does not find any substance in the arguments of learned counsel for the appellant/plaintiff. Needless to say that the land in question has come from their forefather Bhagat Singh, in which the plaintiff and the defendants would have equal rights, in normal course of succession. To claim a better right over the defendants, the plaintiff claim a prior decree dated 24.1.1979. However, despite placing on record the copy of the same as Mark PX, the plaintiff has not shown effort even to prove the said document. Hence, this Court cannot take cognizance of the fact that there was some decree dated 24.1.1979 as such. Although, the plaintiff has placed on record certain *jamabandis*, which reflect their names as the joint owners, however, even that cannot be taken as any document conferring any extra benefit upon the plaintiff. Hence, there is nothing on record to show that the plaintiff was entitled to any share more than the share which would have come to him by way of natural succession.

Although, learned counsel for the plaintiff has raised the submissions that the Court guardian has not been appointed, therefore, the plaintiff being a minor, no decree could have been passed against him, however, the fact remains that the plaintiff was duly represented in the suit by his two real brothers, who have no interest adverse to the interest of the plaintiff. Rather, they had the common interest with the plaintiff as such. Not only this, the impugned decree dated 17.12.1979 also shows that the plaintiff and his brothers has got more share as compared to the share of the defendants and they got their shares jointly. Hence, this stands proved that the

plaintiff also got more share as compared to the defendants, which otherwise would have gone in proportionate shares as per the natural succession. Hence, it cannot be said that the plaintiff was adversely affected by the said compromise decree, in which he was represented through his brothers. Rather, the decree was beneficial for him. Hence, the decree cannot be set aside on the ground that the decree was suffered without appointment of the Court guardian.

So far as the point of limitation is concerned, this Court finds that both the Courts below have rightly recorded the finding that the suit filed by the plaintiff is time barred. The defendants have duly proved on record the *rapat rojnamcha* dated 30.9.1995. This *rapat rojnamcha* is dealing with the land which is subject matter of the impugned decree only. This is clear from the fact that as per the entry; the land measuring 2 *bighas* 15 *biswas*, which was mentioned in the decree as well, is going to the sons of the uncle of the plaintiff; Mulkha Singh, whereas, the land measuring 1 *bigha* 5 *biswas* is coming to exclusive share of the present plaintiff. This document is duly signed by the plaintiff himself. Since this document is dated 30.9.1995, therefore, by any means, it cannot be said that the plaintiff was not aware of the decree as such. When the land, which is subject matter of the decree is being dealt with in the revenue record and the plaintiff is a party to those proceedings, it does not lie in the mouth of the plaintiff; to subsequently claim that he was not aware of the said decree. The plaintiff has tried to cover up the limitation only on the basis that the defendants themselves have moved an application for getting the mutation on the basis of the said decree in the year 2009. However, even if the application of the defendants as such is read, that also shows that they had already submitted the decree to the *patwari*.

However, at the relevant time, the correct entries were not made by the said *patwari*, which necessitated the subsequent proceedings, which were initiated in the year 2009. However, these subsequently initiated proceedings by the defendants, cannot wipe out the signatures of the plaintiff on the proceedings of 1995, where, he was party and he was getting land under that particular *rapat rojnamcha*. Hence, on the point of limitation as well, this Court does not find any substance in the argument of the learned counsel for the plaintiff.

Although, learned counsel for the plaintiff has cited the above mentioned judgments, however, these are distinguishable on the facts of this case. In none of those cases, the minor was getting through decree share more than what he would have got in normal course of succession. None of those cases shows that the minor in those cases was signatory to the some proceedings relating to subject matter of decree even after attaining majority; but long before the date of filing of the suit. Rather, the Full Bench judgment of this Court in the case of **Amrik Singh** (supra) goes against the plaintiff.

No other point was argued by learned counsel for the plaintiff.

In view of the above, finding no illegality or perversity with the impugned judgments and decrees, the present appeal is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

31.1.2020

Ashwani

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