

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

**RSA-2108-2018 (O&M)
Decided on : 13.10.2020**

Nawal Singh

. . . Appellant(s)

Versus

Kailash and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

Present: Mr. O.P. Goyal, Sr. Advocate with
Ms. Shallie Mahajan, Advocate
for the appellant.

MANJARI NEHRU KAUL, J.

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 30th January, 2014. An appeal, which was thereafter preferred against the said decree, too failed and was dismissed on 13th December, 2016. It is in this background, the appellant-plaintiff is before this Court in Regular Second Appeal (RSA). Parties to the *lis*, hereinafter, would be referred to by their original positions in the suit.

Plaintiff filed a suit praying for a decree for permanent injunction with respect to the suit property described as Khewat No. 93/82, Khatoni No.100, Mustil No.9, Killa No.13/2(1-11), 17/2(6-4), Mustil No.18, Killa No.5 (10-13), Mustil No.6, Killa No. 11 (8-13), Mustil No.30, Killa No.17(3-0), 18(7-8), Mustil No.45, Killa No.10(8-0), Mustil No.46, Killa No.15(8-0), 16(7-18), Khasra No.345(0-3), gair mumkin garha khad, Kitta 10 total measuring 56 Kanal 10 Marla and Khewat No.206/183, Khatoni No.244, Mustil No.6, Killa No.20/2(5-3), Mustil No.7, Killa No.15/2(2-10),

16(8-0), 25/1(7-0), 25/2(1-0), 17/1(4-8), 24/2(2-0), Mustil No.9, Killa No.14(6-19), 18/1(2-11), Mustil No.18, Killa No.5/2(7-7), 6/1(3-16), Mustil No.30, Killa No.19(5-2), 23/1(3-14) Mustil No.45, Killa No.1(8-0), Mustil No.46, Killa No.5(1-8), 6(7-15), 14(7-4), 17(6-8), Kitta 19 total measuring 94 Kanal 14 Marla, situated at village Siwana Mauja Musepur, Tehsil and District Rewari.

In brief, the case as set out by the plaintiff was that his father Tula Ram, was owner in possession of the suit land, which was ancestral and a coparcenary property and as such, he claimed $\frac{1}{2}$ share in the land by birth. It was pleaded by the plaintiff that mutation No. 643, dated 23rd March, 1999, wherein, all the legal heirs of Tula Ram {wife - respondent No.3 in civil suit, three daughters - respondents No.1, 2 & 4 in civil suit and a son i.e. the plaintiff} shown to have inherited equal shares, was sanctioned illegally and in a secretive manner, whereby, land belonging to Tula Ram was mutated on 23.03.1999 in their favour, whereas, in fact, they were entitled to $\frac{2}{5}$ th share. It was also pleaded that defendant No.1 i.e. Smt. Kailash, daughter of Tula Ram, without as much as having any right or title in the suit property had executed a sale-deed No. 5073, dated 06.10.2016 in favour of defendants No.5 to 7 (i.e. Chandrawati, Anita and Neelam Chandna) *qua* which mutation No.838 was got sanctioned, which on the face of it was illegal, null and void and deserved to be set-aside, as defendant No.1 had only $\frac{1}{10}$ th share in the suit property. It was further averred that in June, 2006, when it came to the notice of the plaintiff about the disputed mutation No. 643, dated 23.03.1999, he preferred the civil suit before the trial Court. During the pendency of the said civil suit, an application for amendment of the plaint was moved on 19th July, 2010 by

the plaintiff, wherein, he claimed that by way of a consent decree dated 26th April, 1972, he had become the owner in possession of 63 Kanal 4 Marla of land, which was part of the suit property. He also averred that through sale-deed No. 5673, dated 06th October, 2006 executed by defendant No.1 in favour of defendants No.5 to 7, she had sold more than her 1/10th share. As his repeated requests to the defendants to get the said mutation No.643 set-aside failed, he was left with no choice, but to institute the civil suit before the trial Court, wherein, he sought relief of decree of declaration that the aforementioned mutations (mutation Nos. 643 & 838) and the sale-deed be declared null and void and he be given 3/5th share while restraining the defendants from interfering in his share.

In defense, in the written statement filed by defendant No.1, after taking preliminary objections *qua* the maintainability of the suit filed by the plaintiff, she denied and controverted the averments of the plaintiff. It was submitted that in fact mutation No.643 had been incorporated as per the share of the plaintiff and the defendants, and thus the plaintiff had no right to challenge the same. It was submitted that mutation No.643, dated 23rd March, 1999, was sanctioned in the presence of the plaintiff himself and his submission that he came to know about the said mutation in June, 2006, was belied by the documents on record. It was thus submitted that the suit be dismissed.

Defendants No.2 and 3 filed their written statements and prayed for decreeing the suit. Defendant No.4 did not file any written statement.

Defendants No.5 to 7 filed their separate written statements and took a similar stand as taken by defendant No.1. It was denied that the property in dispute was ancestral and coparcenary. Besides this, it was also

submitted that the plaintiff had only 1/5th share in the property in dispute and had never been in possession of 1/2th share, as had been pleaded by him. It was further averred that they were *bona fide* purchasers for valuable consideration of the 1/5th share of defendant No.1, which had been sold by her in their favour. Further, it was submitted that the parties were Ahir by caste and they were bound by 'Rewaj Zamidara'.

In the replication filed by the plaintiff, he averred that the name of defendant No.1 had wrongly continued in the revenue record. He reiterated that he had acquired interest in 63 Kanal & 4 Marla of the suit property by way of the consent decree on 26th April, 1972 and during the lifetime of Tula Ram itself, he had been in cultivating possession of his share in the land.

The Courts below discarded the reliance placed by the defendants No.5 to 7 on 'Rewaj Zamidara' by concluding that it would not be applicable in the present case, as the inheritance of the estate of the deceased Tula Ram was to be governed by the Hindu Succession Act, more so, in the absence of any specific evidence having been placed on record to the contrary. Further the Courts below concluded and noticed that though the judgment and decree dated 26.06.1972, exhibited as PW5/D, had not been set-aside but the plaintiff had miserably failed to convince the Court as to why they had not been incorporated in the revenue records.

I have heard learned counsel for the appellant and perused the paper-book.

Learned Senior counsel for the appellant is simply seeking to reiterate the submissions, which had been advanced before the Courts below and, which were rejected after being comprehensively and duly considered.

On a thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and thus liable to be dismissed for the reasons recorded hereinafter.

The plaintiff is claiming himself to be owner in possession of land measuring 63 Kanal 4 Marla on the basis of a consent decree dated 26th April, 1972 (Ex.PW5/D), passed in civil suit No.255 of 24th April, 1972, on the ground that the suit land was ancestral property, as a result of which, he had right in it by birth. The appellant has miserably failed to bring on record any cogent documentary evidence in support of the property being ancestral and coparcenary in nature. It may be noticed that for a property to fall within the purview of “ancestral property”, it should have been inherited by a male Hindu through three immediate paternal ancestors i.e. Father, father's father and father's father's father. Though, the appellant/plaintiff placed on record a copy of mutation No. 245 as Ex.P1, copy of mutation No. 322 as Ex.P2 and a pedigree table as Ex.P3, to show the nature of the suit land to be ancestral, he failed to produce the original excerpt to prove the nature of the suit land as ancestral and therefore, he cannot derive any benefit from it. Still further, though the judgment and decree dated 26th April, 1972, exhibited as PW5/D, was not set-aside, but the plaintiff has failed to satisfy and convince the Court as to why the relevant entries with respect to the ownership/possession had not been incorporated in the revenue record. No doubt, defendant No.4 filed written statement in the civil suit No. 255 of 1972, as General Power of Attorney (GPA) of Tula Ram, but strangely, the said GPA was never brought on record nor did the GPA holder step into the witness-box in the instant case to depose and support the case of the plaintiff, that the consent decree in question had

actually been got passed by Tula Ram in favour of the plaintiff.

Still further, even in the prayer clause no relief was claimed based on the consent decree. The observations and the findings given by the Courts below cannot be faulted with, as the plaintiff himself did not abide by the aforementioned judgment and decree and did not even get the decree executed within 12 years, as stipulated under Section 136 of the Limitation Act, 1963. Not only this, the possession of the plaintiff over the specific Killa numbers on which he is claiming possession did not find reflected in the Jamabandis exhibited as Ex.D1 to Ex.D8.

The case of the appellant is further demolished as during the cross-examination of PW-1 Brij Lal, the latter admitted that after the death of Tula Ram his legal heirs were owner in possession of the suit land in equal shares. Rather, the appellant who stepped into the witness-box as PW-4 has also corroborated the testimony of PW-1 Brij Lal during his evidence before the Court below, wherein, he admitted that the mutation was sanctioned in equal shares qua all the legal heirs. Thus the stand taken by him is self contradictory. Further, from the reading of the 'Padat Sarkar', Ex.D11, it is clear that the plaintiff was present when mutation No. 643 was sanctioned in the year 1999, and thus, obviously he had knowledge of the said mutation in the year 1999. A suit for declaration as per Section 58 of the Limitation Act, has to be filed within three years from the date when the cause of action first accrued. Since the present suit was filed by the appellant in 2006, the same is clearly barred by limitation. Still further, a perusal of Section 3(1) of the Limitation Act, 1963, reveals that every suit filed after the prescribed period shall be dismissed although limitation has not been set up as a defence.

As a sequel to the above, the appellant has miserably failed to prove his exclusive possession of 63 Kanal 4 Marla of suit land after the passing of the consent decree. In the wake of the position as set out above and the conclusions that have been concurrently recorded by both the Courts below, there hardly exists any ground, plausible in law to interfere with the decree which has been assailed in the instant appeal. No question of law, much less, substantive arises for consideration in the present appeal. The appeal being devoid of merit is accordingly dismissed. The judgments and decrees of the Courts below are affirmed.

Since the main appeal has been dismissed, consequently all miscellaneous applications also stand dismissed.

(MANJARI NEHRU KAUL)
JUDGE

October 13, 2020

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*