

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 2396 OF 2018 (O&M)
DATE OF DECISION : 26.02.2020

Dharambir & Anr.

...Appellants

versus

Jai Singh & Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Subhash Rana, Advocate for
Mr. M.S. Rana, Advocate,
for the appellant.

ARUN MONGA, J.

1. Instant regular second appeal has been filed against the adverse concurrent findings recorded against the appellants by the Courts below in their suit for declaration that they along with proforma defendants are owners in possession of suit property, fully detailed in the head note of the plaint. The suit was dismissed by the trial Court and the appeal filed by the appellant was also dismissed by the First Appellate Court.

2. Along with instant appeal, applications have been filed seeking condonation of delay of 896 days in re-filing and 3 days in filing the appeal. It has been averred that the appeal was filed on 17.04.2015 and it was returned on 21.04.2015 with certain objections. It was re-filed on 27.11.2017 but again objections were raised and it was returned on 06.01.2018. Later, it got mixed up with other files and could only be filed on 01.02.2018. As a result delay of 896 days in re-filing had occurred.

3. Having heard learned counsel for the appellant, this Court is of the opinion that no ground is made out to condone such a colossal delay,

especially in absence of any cogent and plausible reason. Nothing has been mentioned as to why when the appeal was returned by the Registry on 21.04.2015 with objections, the same was not filed immediately after removing the objections and it was only filed on 27.11.2017 i.e. after more than two and a half years. There is no justification forthcoming on the delay aspect.

4. Not only on delay and laches, this Court is of the view that on merits also the appellant is liable to be non-suited as rightly done by the Courts below.

5. The suit was filed by the plaintiff/ appellants asserting that their father Fateh Singh, defendants no. 3 to 7, grandfather of Proforma defendant no. 8 and 9 and father-in-law of proforma defendant no. 10, was the recorded owner in possession of land measuring 10 kanal 19 marla being 2/9 share out of total land 49 kanal 11 marla comprised in Khewat No. 111/106 detailed in Para no. 3 of the plaint. Fateh Singh got the land vide mutation No. 332, which was sanctioned on the basis of Civil Court decree dt 16.11.1962. It was self acquired property of Fateh Singh. He died on 13.02.2000 leaving behind the plaintiffs and proforma defendants as his legal heirs and successors-in-interest. The property in dispute devolved upon the plaintiffs and proforma defendants as per Hindu Succession Act. Since then, the plaintiffs and proforma defendants are owners in joint possession of the land in dispute. However, in the first week of January, 2008 defendants No. 1 and 2 brought some musclemen and property dealers at the disputed property and showed their intention to take possession illegally and forcibly. Plaintiffs thereafter enquired about the matter from the revenue authorities, upon which it was revealed that land measuring 10

kanal has been mutated in the name of defendants no. 1 and 2 vide mutation no. 815 based upon a Civil Court decree dt 11.06.1994 passed by Id Sub Judge Ist Class, Karnal in the Civil Suit No. 768 of 1994 titled *Balbir Singh V. Fateh Singh*. Fateh singh never appeared in the court in the said suit and he never made any statement. The judgment was procured by fraud, misrepresentation of facts and undue influence. Fateh Singh was an illiterate person and taking undue advantage of the cordial relations of Fateh Singh with the father of defendants no. 1 and 2, the decree under challenge was procured. There was no family settlement as alleged and defendants no. 1 and 2 were having no pre-existing right in the suit land, which was self acquired property of Fateh Singh now deceased. The transaction related to immovable property worth more than Rs.100/-. Registration of document vide which the property was transferred was compulsory. Cause of action for filing the suit arose in the month of January, 2008 when the plaintiffs came to know regarding the decree dt 11.06.1994 and defendants no. 1 and 2 threatened to dispossess the plaintiffs from the suit property illegally and forcibly.

6. Defendant no. 1 and 2 filed joint written statement. It was claimed that the property was jointly occupied by the ancestors of the parties to the suit and the pre-emption money qua the total land measuring 49 kanal 4 marla had been paid by the ancestors of the parties to the suit. As Hans Raj had refused to get the pre-empted land mutated in the name of father of defendants no. 1 and 2, another suit was filed wherein Hans Raj got transferred the land in dispute in favour of father of the answering defendants. It was further submitted that a family settlement arrived at inter se members of the joint family about six months prior to the filing of civil

suit no. 768 of 1994 in which the impugned judgment and decree were passed. The possession of land measuring 10 kanal which was transferred had also been delivered to defendants No.1 and 2 by Fateh Singh. It was submitted that Fateh Singh never challenged the decree dt 11.6.1994 during his life time. He had recognized the decree as valid and got passed in view of the family settlement. It was submitted that Fateh Singh had himself appeared before the court and admitted the claim of the answering defendants. The court, in view of the admitted claim passed the decree dated 11.06.1994. The plaintiffs are not in possession over the suit property. Rather, defendants no 1 and 2 are in its possession since long.

7. Proforma defendants no. 3 to 10 filed their joint written statement admitting the claim of plaintiffs.

8. Based on the pleadings of parties, following issues were framed:-

1. *Whether the judgment and decree dated 11.06.1994 passed in civil suit No. 768 of 1994 titled Balbir Vs. Fateh Singh and subsequent mutation No. 815 are illegal, null and void and not binding upon the rights of the plaintiffs, as alleged and liable to be set aside on the grounds mentioned in the plaint? OPP*

2. *If issue No.1 is proved whether the plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP*

3. *Whether the plaintiffs have no locus standi and cause of action to file the suit? OPD*

4. *Whether the suit is not maintainable? OPD*

5. *Relief.*

9.

The parties led evidence in support of their pleadings to

discharge their respective onus as per the issues *ibid*.

10. After analyzing the evidence produced by the parties, the trial Court vide judgment and decree dated 07.10.2011 dismissed the suit. Plaintiff filed first appeal which too was dismissed by learned Additional District Judge, Karnal vide judgment and decree dated 06.01.2015 reaffirming the findings returned by the trial Court. Hence, the instant regular second appeal.

11. I have heard learned counsel for the appellant and have perused the judgments passed by the Courts below vis-a-vis the grounds of appeal taken before this Court.

12. It has been held by the trial Court that Fateh Singh was real uncle of defendants and they constituted a joint Hindu Family. The evidence of DW1 proved that Fateh Singh had appeared in the previous suit on 11.6.1994 and a decree was passed. The signatures of Fateh Singh were neither denied nor the decree was challenged by Fateh Singh during his lifetime. The decree along with mutation in the suit giving rise to the instant appeal on the ground of fraud, mis representation and undue influence. As per pleadings, Fateh Singh never appeared before the court, nor made any written statement in the court. However, DW1 who was an advocate and appeared on behalf of Fateh Singh specifically deposed that the written statement was got filed by Fateh Singh. His statement was also recorded on 11.6.1994 and then the decree Ex D8 was passed. So the statement recorded in the court cannot be said to have been obtained by fraud or misrepresentation. There is no denial by the plaintiffs of thumb impression of Fateh Singh on these documents. Mere oral evidence that Fateh Singh never engaged any counsel, nor got filed any written statement cannot be

accepted in view of the statement of DW1. No fraud, thus, was ever committed on Fateh Singh. The decrease in share of Fateh Singh had appeared in the revenue record by way of Ex. P4, Ex. D24, 27 and 28. The fact of transfer of property in the name of defendants was in knowledge of plaintiffs from 13.05.2004. The date of knowledge January, 2008 as pleaded by plaintiffs was wrong.

13. Another ground taken by the plaintiff is that there was no occasion for Fateh Singh to give his land to defendants no 1 and 2. However, DW4 Jai Singh in his cross examination stated that the pre-emption money was paid by them and due to this reason the land was given to them in family settlement on the basis of compromise and this was an oral compromise. The trial Court held that the plaintiffs had completely failed to give details of fraud. There was no question of undue influence because defendants no. 1 and 2 are nephews of Fateh Singh and rather Fateh Singh was in dominating position. The judgment and decree dt 11.6.1994 and mutation no. 815 cannot be held as illegal, null and void and there was no ground to set aside the same. Further the plaintiffs are not entitled for any injunction. The plaintiffs have to stand on their own legs and they seem to have miserably failed to discharge the onus of proof burdened on them, as per issues framed by the trial Court. Suit was, therefore, dismissed by the trial Court.

14. The first Appellate Court dismissed the appeal observing that plaintiffs have failed to prove their pleas. To my mind, the appeal, was also rightly dismissed.

15. In my opinion, the conclusions drawn by the learned trial Court and the learned first Appellate Court are correct and are in consonance with

the record and facts of the case. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

16. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

17. In view of my discussion above and the reasons recorded therein, this appeal is dismissed on the ground of delay and laches as well as being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

18. Pending applications stand disposed of.

19. No order as to costs.

(ARUN MONGA)
JUDGE

FEBRUARY 26, 2020
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |