

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

RSA-1239-2003 (O&M) with
CM-4332-C-2014
Date of decision: 28.02.2022

Labh KaurAppellant

versus

Amir Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ashish Aggarwal, Senior Advocate with
Ms. Aashna Aggarwal, Advocate
for the appellant.

Mr. S.S. Salar, Advocate
for respondents No.1 and 2.

FATEH DEEP SINGH, J.

Due to outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

Appellant-Labh Kaur, then plaintiff, initially filed against Amir Singh and others in all 12 defendants, a suit for declaration with consequential relief of possession and permanent injunction. The Court of the learned Civil Judge (Senior Division), Karnal, decreed the suit of the plaintiff. Upon appeal, the Court of

learned Additional District Judge vide impugned judgment/decreed dated 07.01.2003 allowed the appeal of the appellant/defendants and set aside the judgment/decreed of the Trial Court. It is against these divergent expression of opinions by the two Courts below, the instant second regular appeal has come about.

Heard counsel for the parties and perused the records.

The brief facts are that Bahadur Singh was the owner of land measuring 104 Kanal 01 Marla, 206 Karnal 02 Marla and 66 Kanal 14 Marla duly described and depicted in the head note situated in the two separate revenue estates of District Karnal and District Kurukshetra, Haryana. It is not disputed that Bahadur Singh died leaving behind the plaintiff-Labh Kaur, a daughter and his widow (mother of Labh Kaur) as the lone heirs to inherit the estate of the deceased. It is, thereafter, with the efflux of time, mother of Labh Kaur re-married and had transferred her share in the property in the name of the plaintiff through a Civil Court decree and, thus, the plaintiff-Labh Kaur became absolute owner in possession of these properties exclusively. It is pertinent to mention here that at that point of time, the plaintiff was a minor and was reared by defendants-Amir Singh, Lakha Singh, Sahab Singh and Joga Singh, who happened to be her distant relatives.

Labh Kaur got married in the year 1976. It is subsequent thereto, she came to know that the defendants No.1 to 4 have perpetrated a fraud upon her and got land of the plaintiff transferred in their names 20 years ago while she was still a minor and on the basis of which, got mutation sanctioned in their names. The plaintiffs challenged this alienation claiming that a bogus and forged decree in connivance with the revenue authorities was created on paper leading to this surreptitious and illegal fraudulent transfer of her property and, thus, challenged the entire transaction.

The defendants No.1 to 4 besides usual preliminary objections of limitation, took the plea that they were the owners in possession of the suit property on the basis of Civil Court decree and, therefore, in the absence of any fraud, particulars termed the suit to be bad and termed that a Civil Court decree dated 28.04.1972 passed by the Court of Sub-Judge, 1st Class, Karnal had been passed in their favour leading to this mutation and, hence, their ownership in question. Other defendants set up plea of being *bonafide* purchasers. The Trial Court framed the following issues:-

1. Whether the entries of jamabandi and the sale made on the basis of the same in favour of defendants No.5 to 13 are liable to be set-aside on the grounds mentioned in the plaint? OPP
2. Whether the plaintiff is entitled for possession and injunction as prayed for? OPP

3. Whether the suit is time barred? OPD
4. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
5. Whether defendants No.1 to 4 have become owners by way of adverse possession? OPD
6. Whether the particulars mentioned in the plaint are wrong and based on fraud, if so, to what effect? OPD
7. Whether the plaintiff is estopped from filing the present suit? OPD
8. Whether the suit is bad for non-joinder of necessary parties? OPD
9. Whether the particulars of the defendants are not properly described in the plaint, if so, to what effect? OPD
10. Relief.

In view of the recent pronouncement in 'Kirodi (since deceased) through his LR vs. Ram Parkash and others' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

The plaintiff examined herself as PW-1 and reiterated her case proving revenue documents as Ex.P-1 to Ex.P-18. On the other hand, defendants examined Manwinder Kaur, Clerk as

DW-1, Dharam Singh, Civil Ahlmad as DW-2, Mukhtiar Singh as DW-3 and Amir Singh as DW-4 and, thereby, proved documents as Ex.D-1 to Ex.D-4 and placed on record document as Mark 'A' and Mark 'B'. It is there upon, the impugned findings by the Trial Court were passed which were reversed by the First Appellate Court.

During the pendency of the appeal, an application under Order 41 Rule 27 CPC was moved on behalf of the appellant and which was allowed on the statement of the respondents as a consequence of which, criminal complaint filed by Labh Kaur against Amir Singh (Ex.Px) and cross-appeal filed by Labh Kaur in the criminal proceedings (Ex.Py) were brought on record. It is worthwhile to refer here vide judgment order dated 22.04.2010, Amir Singh was found guilty and convicted for offences punishable under Sections 466 and 471 of the Indian Penal Code.

The factum of Bahadur Singh father of Labh Kaur, being the absolute owner in possession of these properties, is not at all displaced and so his death around the year 1947. It is also not disputed that Bahadur Singh left behind his widow-Gurbachan Kaur and daughter-Labh Kaur, the lone child and that Gurbachan Kaur entered into a *Karewa* ceremony and it is around the year

1958, mother-Gurbachan Kaur had transferred her share through a Civil Court decree her share of properties in favour of Labh Kaur. Labh Kaur, admittedly, had married Sahab Singh in the year 1976. The plea of the defendants-Ami Singh and others is that it is by virtue of judgment/decreed dated 28.04.1972, they have come to be the owners in possession of this property from Labh Kaur in respect of which *rapat roznamcha* (Ex.P-17) was made. As has been argued on behalf of the appellant by their counsel Mr. Ashish Aggarwal, Senior Advocate that the very passing of judgment/decreed has not been established on the records could not be controverted by Mr. S.S. Salar, counsel for the respondents. More so, mere mutation (Ex.D-3) does not create right title or interest and it is well settled proposition of law that mutation does not confers title and is only to facilitate payment of revenue. More so, to the specific query of this Court, Mr. S.S. Salar, Advocate for the respondents could not convince how there has been due corroboration to this passing of judgment/decreed in favour of the respondents not even an *iota* of evidence by way of judgment/decreed has been proved on the record much less any Court register to show entries of the suit having been made and so the disposal. What baffles the Court is that the pendency/disposal

register of the Court of learned Additional Civil Judge (Senior Division), Karnal has been placed on the record reflects that there is no such corroboration as claimed by the respondents' side and what is reflected is that there are manipulations sought to be incorporated in a register which is bereft of any truthfulness and rather is an element of another fraud to camouflage the previous fraud by these respondents. More so, the strong suspicion that comes about is that admittedly, the land in question is situated in three different villages with different *hadbast* numbers being in different revenue estates and districts how there can be a single mutation (Ex.D-3) in respect of the same by a single alleged revenue document puts a big question mark on their veracity and truthfulness.

The respondents in their written statement have taken the plea for adverse possession as well as contradictory plea that they have been paying *batai* to the plaintiff are two mutually exclusive and self-destructing pleas for which this Court seeks reliance upon the judgments titled as 'Ajmer Singh versus Surjit Singh' 1992 CivCC 628 and 'Ujagar Singh (dead) repled. By his LRs versus Shivraj Singh' 1997 (1) CivCC 313, where it has been held by this Court that plea of adverse possession is destructive as

on one hand, they claim to have come into ownership and possession by virtue of a Civil Court decree and on the other hand, they claim to be in adverse possession of the same. Besides the fact that on one hand, they claim to be in permissible ownership of this property and on the other hand, they have set up a plea for adverse possession, certainly does not convince the Court much for which reliance is placed on judgment titled as 'Rama Kanta Jain versus M.S. Jain' 1999 (2) R.C.R. (Civil) 685. More so, Mr. S.S. Salar, Advocate though had detailed the evidence of the respondents but could not convince by what means they have been able to prove adverse possession for the prescriptive period for which this Court seeks support from the judgment titled 'India versus Arumugam' 1998 (2) PLJ 109. It needs to be kept in mind that the conduct of the respondents during the course of trial when they had moved permission to amend their written statement to incorporate that they want to trace the history to how the civil suit record on the basis of which, they have become owners is not traceable and which was dismissed by the Trial Court and against which, civil revision too met its nemesis. The trial Court in its findings in para 9 have given a clear cut observation that such a decree being claimed by these respondents was never actually

passed and their case is based on interpolation and forgery and amounts to criminal offence for which penal action was recommended.

What further corroborates the stand of the trial Court is illustrative from the report of the record room that no such record of the judgment/decreed was available nor any entry has been made in the *goshwara* register and which is as is reflected from Ex.D-2 is primarily carrying cuttings, interpolations and over writings to substantiate the stand of the defendants now respondents. As has been argued on behalf of the appellant that even the *rapat roznamcha* (Ex. D-4) does not carry particulars of the Executing Court nor the name and designation of the authority which has entered in this *roznamcha* entry. More so, had there been a judgment/decreed in question as claimed by the respondents in view of the assertion made by the counsel for the respondent, no such certified copy has been brought on the record much less any photostat copy of the same. What one can perceive from the impugned findings of the First Appellate Court that the Court is trying to side with the defendants now respondents on own presumptions and assumptions which are never supported on the records and none of the ratios cited by Mr. S.S. Salar, Advocate advanced the case of the respondents.

As has been observation of the Supreme Court of India and which is reproduced as below:-

“Fraud-avoids all judicial acts, ecclesiastical or temporal’ observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a judgment/decree – by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”

Since, the plaintiff has clearly on the basis and strength of the revenue record an invariable admission of ownership by the then defendants now respondents of Labh Kaur and, therefore, the plaintiff cannot be non-suited once she has established her title on the strength of the revenue records which remain undisplaced on the records. Being a case of fraud and deception, whereby, the plaintiff has sought her reassertion of her title and, therefore, being a recurring cause of action cannot be barred by any plea of limitation that too by perpetrators of such a fraud. Since, the respondents have been found guilty and convicted for such a fraud and on account of such illegal and fraudulent acts, the stand needs

to be deprecated.

The learned Trial Court has given a well reasoned findings and has rightly returned its findings holding that the plaintiff happens to be the owner of the suit property and, thus, is entitled to its possession and the findings of the learned Trial Court and all the issues are upheld. The impugned judgment/decreed under assail is wholly illegal and needs to be set aside by way of the acceptance of the instant appeal.

The present appeal stands allowed accordingly.

28.02.2022

Neha

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No