

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1429 of 1993 (O&M)
Date of Decision :01.12.2022

Partap Singh

.....Appellant

Versus

Mander Singh

..... Respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI, JUDGE

Present : Mr. Surinder Garg, Advocate for the appellant.

None for the respondent.

ARUN PALLI, J. (Oral):

Suit filed by the appellant-plaintiff was dismissed by the trial Court, vide judgment and decree dated 17.01.1990. For, even the appeal preferred against the said decree failed and was dismissed on 24.12.1992, the appellant/plaintiff is in Regular Second Appeal.

Parties to the *lis* hereinafter shall be referred to by their original position to the suit.

Plaintiff prayed for a declaration that the impugned judgment and decree dated 26.10.1978, passed in Civil Suit No.404, titled Mander Singh Vs. Partap Singh, regarding the suit land measuring 15 kanals 15 marlas was a result of fraud. Further, even the mutation sanctioned on the basis of the said decree was liable to be set aside, for the plaintiff happened to be the owner of the suit land and never suffered any such decree. It was averred that no family settlement was ever arrived at between the parties, and thus, there was no occasion for the plaintiff to have suffered a decree

dated 26.10.1978. And, it was only when the plaintiff went to the Patwari to enquire about the *khasra girdwari*, he acquired knowledge of the impugned decree and the next day the defendant took forcible possession of the suit land.

The defense set out in the written statement filed by the defendant was that the suit filed by the plaintiff was not maintainable, as he never prayed for a consequential relief of possession but only declaration. The suit was liable to be dismissed being time barred. Further, in a suit filed by the defendant, plaintiff Partap Singh had filed the written statement through his counsel and had conceded his claim after his statement was recorded, the Court passed a decree dated 26.10.1978, in his favour. Subsequently, on the basis of the said decree, vide mutation No.16082 dated 22.02.1980, the suit land was mutated in favour of the defendant. And he had even mortgaged a portion thereof on 09.06.1981. Further, being owner of the suit property, he also executed an agreement to sell qua a land measuring 12 kanals in favour of Roop Singh, Hakam Singh and Surjit Singh sons of Joginder Singh. Still further, in a suit filed by one Gurbax Singh, a money decree was passed against plaintiff Partap Singh and in the execution proceedings of the said decree, the plaintiff conceded that he was not the owner of any landed property and the suit land was owned by the defendant (Mander Singh). Thus, the decree being lawful and having passed by a Court of competent jurisdiction, the same was binding upon the plaintiff.

Upon analysis of the material and evidence on record, both the Courts concurrently concluded: the specific case set out by the plaintiff was

that he acquired knowledge of the decree dated 26.10.1978, and the mutation dated 22.02.1980, only a month prior to the institution of the suit, when he visited the patwari to enquire about the *khasra girdawari* and on the following day the defendant obtained forcible possession of the suit land. However, the plaintiff (PW1) conceded in his cross-examination that defendant was in actual physical possession of the suit land for the last 10-11 years. Although, he hastened to add that the suit property was on lease with the defendant, who would pay a share of the produce to the plaintiff, but that was not the case of the plaintiff at any stage. Accordingly, it was concluded that the defendant was in possession of the suit land prior to the decree dated 26.10.1978. And, in terms of Articles 58 and 59 of the Limitation Act, the limitation for setting aside a decree as also the mutation was three years, and therefore, the suit filed by the plaintiff on November 26, 1987, was apparently time barred. It was observed that even if there is an entry in the revenue record that is adverse to the person in possession, he may still ignore the same as he could file a suit only when his rights are actually threatened. However, that was not the case here, for the plaintiff was not in possession of the suit property.

The plea that as no family settlement was arrived at between the parties, and, therefore, there was no occasion for the plaintiff to have suffered a decree in favour of the defendant, was inconsequential as the position of law was settled that in subsequent suit/proceedings, the correctness or veracity of the pleadings in the previous suit could not be gone into. Indisputably, the onus to prove that plaintiff never appeared in Suit No.404, and he was impersonated or decree dated 26.10.1978, was

obtained by fraud, lay upon the plaintiff, which he apparently failed to discharge. In the given circumstances, for plaintiff to succeed, he was required to requisition the records of Suit No.404 and lead the necessary evidence to prove that neither did he submit any written statement conceding the claim of the plaintiff nor appeared in Court to make the alleged statement. But it had come on record that the original file of the previous suit was destroyed in the fire that broke out in the record room at Faridkot, in the year 1984. However, the plaintiff was granted due opportunity to prove his claim by leading secondary evidence. But other than his solitary statement no other evidence was led. He never even chose to examine the Lawyer, who alleged to have filed the written statement on his behalf, and got his statement recorded in Court. Significantly, the plaintiff had denied in his cross-examination if Gurbax Singh had filed a money suit against him which was decreed and later in the execution proceedings he raised an objection that he was no longer the owner and the suit property was owned and possessed by the defendant. However, the execution Clerk Gurdip Singh brought the relevant record to prove that a suit filed by Gurbax Singh against the plaintiff was decreed and subsequently the execution petition filed by him was disposed of having been satisfied on 10.02.1984, as the plaintiff had deposited the decretal amount. That being so, it was concluded that the plaintiff was estopped by his own act and conduct for challenging the impugned decree which he himself suffered in favour of the defendant, and thus, was not entitled to the declaration prayed for.

Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the impugned judgment and

decree suffered from any material illegality or was contrary to the position on record.

That being so, no ground is made out to interfere in the impugned judgment and decree. The appeal being devoid of merit is accordingly dismissed.

(ARUN PALLI)
JUDGE

01.12.2022
Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No