

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2590 of 1986 (O&M)

Reserved On: 02.09.2023
Pronounced On: 05.09.2023

Jai Ram (Since Deceased) through his Legal Representatives

... Appellant(s)

Versus

Bentketacharya

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. J.P.Sharma, Advocate
for the appellant(s).

Mr. Ajay Jain, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. The correctness of the concurrent findings of the facts, arrived at by both the Courts below, is challenged by the plaintiffs in this second appeal.

3. The suit filed by the plaintiffs for the grant of decree of declaration with a consequential relief of permanent injunction in order to challenge the consent decree dated 22.04.1968, suffered by their predecessor

late Sh. Naunda Ram in favour of the defendant No.1 Benkatacharya, has

been dismissed by both the Courts below.

4. In order to comprehend the controversy involved in the present case, some relevant facts, in brief, are required to be noticed. Late Sh.Naunda Ram, predecessor-in-interest of the plaintiffs, along with Shiv Narain and Banwari Lal were the co-owners in the land measuring 32 bighas and 14 biswas. Late Sh.Naunda Ram was the owner to the extent of half of the share in the joint land, whereas the remaining half belonged to Shiv Narain and Banwari Lal who, in turn, sold their half share to Prabhu etc. vide registered sale deed dated 12.06.1959. Late Sh.Naunda Ram filed a suit for possession by way of pre-emption, which according to the defendant No.1, was financed by him. The aforesaid suit was decreed on 20.07.1960. Subsequently, Benkatacharya was reflected in possession of the property. The defendant No.1 (Bengkatacharya) filed a suit against late Sh.Naunda Ram. The suit was decreed as late Sh.Naunda Ram not only filed the admitted written statement conceding to the claim of the plaintiff-Bengkatacharya, but also gave a statement before the Court, resulting in the decree dated 22.04.1968. Late Sh.Naunda Ram never challenged the aforesaid decree dated 22.04.1968. After his death, his son late Sh.Jai Ram and his two sons filed the present suit. The plaintiffs allege that the said decree is collusive and late Sh.Naunda Ram was impersonated. They also claim to be continuing in possession of the property. The defendant No.1, while contesting the suit, claim that the plaintiff No.1 is not the son of late Sh.Naunda Ram. It was also asserted that as a matter of fact, late Sh.Naunda Ram had filed a suit for possession by way of pre-emption only at his instance since he had financed him and the amount of *Zare Panjim* and

ultimately, the total sale consideration was paid by him. The defendant No.1 also asserted that the suit filed by the plaintiffs was barred by limitation period and he is in possession of the property as it has been leased out to Udey Singh @ ₹2,000/- per year. On the pleadings of the parties, the trial Court framed the following issues for decision:-

- “1. *Whether the plaintiff is the owner in possession of the suit land ? OPP*
2. *Whether the plaintiff is estopped from bringing this suit? OPD.*
3. *Whether the decree dated 22.4.68 was obtained by fraud and is not binding on the plaintiff for the reasons stated in para No.5 of the plaint? OPP*
4. *Whether the validity of the decree put in issue No.3 above can be agitated in this suit? OPP*
5. *Whether the plaintiff has no locus standi to bring this suit? OPD*
6. *Whether the suit is within time? OPP (Objected to)*
7. *Relief.”*

5. The trial Court, on the appreciation of evidence, dismissed the suit filed by the plaintiffs while holding that the judgment and decree dated 22.04.1968 is not a result of fraud and the plaintiffs are not in possession of the suit property. On the question of limitation, the trial Court held that the suit filed by the plaintiffs was not barred by limitation period as Sh.Naunda Ram died in the year 1971, whereas the suit was filed in the year 1973.

An appeal filed by the plaintiffs was upheld by the first

Appellate Court on re-appreciation of the evidence.

7. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with the requisitioned record.

8. The learned counsel representing the appellants submits that the judgment and decree dated 22.04.1968 is liable to be set aside as it is not registered. He further submits that late Sh. Naunda Ram was impersonated, but the Finger Print and Handwriting Expert failed to give any final opinion as the thumb impressions were blurred. He submits that the oral evidence proves that late Sh. Naunda Ram never appeared in the suit filed by the defendant No.1.

9. On the other hand, the learned counsel representing the defendant No.1 contends that not only late Sh.Naunda Ram filed a suit for possession by way of pre-emption, but even Jai Ram, the plaintiff No.1 also filed a suit for pre-emption to preempt the sale deed executed by late Sh.Naunda Ram on 29.05.1965 in favour of Ram Kumar, which was decreed on 08.08.1966. He submits that late Sh.Naunda Ram as well as Jai Ram were having sufficient exposure of the procedure in the Court and the plaintiffs have failed to prove that late Sh.Naunda Ram never appeared in the suit which resulted in the decree dated 22.04.1968.

10. This Court has considered the submissions. A finding of fact has been arrived at by both the Courts below and the scope of interference in the second appeal is limited. The argument of the learned counsel representing the appellants that the decree required registration does not have any substance because it has been proved that the pre-existing right of

the defendant No.1 in the property as he financed the previous litigation which resulted in decree for pre-emption on 20.07.1960. This fact is further corroborated because the defendant No.1 was recorded to be in possession as per the jamabandi for the year 1962-63 (Ex.D3). Of course, subsequently, there was a dispute between the parties with regard to possession and in a criminal case Jai Ram was convicted vide judgment (Ex.D13). The First Appellate Court has held that now the plaintiffs are in possession, however, that itself would not be sufficient to doubt the correctness of the decree. Moreover, it is not permissible for the Court to go behind the previous decree passed by the Court in a suit. Reliance in this regard can be placed on the Division Bench in ***Gurdev Kaur and Another v. Mehar Singh and Others AIR 1989 Punjab and Haryana 324***. In para 25 and para 28 (ii), the Division Bench held that a compromise or consent decree can be set aside on one of the grounds on which a contract can be set aside, namely it is obtained by fraud, misrepresentation or coercion with an additional ground in favour of the minor or persons of unsound mind. This judgment of the Division Bench was approved by the Supreme Court in ***Bhoop Singh v. Ram Singh Major and Others (1995) 5 SCC 709***. In para 11 and 12, the supreme Court held that ***Gurdev Kaur's*** judgment is correct.

11. As regards the second argument, it would be noted that the Fingerprint and Handwriting Expert examined by the plaintiffs himself failed to give any opinion to prove that late Sh.Naunda Ram was impersonated or he never appeared in the previous litigation, which resulted in the decree dated 22.04.1968. Moreover, both the Courts below, on appreciation of the oral evidence, have found that the plaintiffs have failed

Regular Second Appeal No. 2590 of 1986 (O&M)

to prove their assertion with regard to impersonation. The learned counsel representing the appellants failed to draw the attention of the Court to any misreading or non-reading of the evidence which goes to the root of the case in this regard. It would be noted here that although the issue of the suit being barred by limitation has been decided in favour of the plaintiffs, however, such finding is incorrect. In this case, the plaintiffs have sought the decree for declaration that the judgment and decree dated 22.04.1968 is bad in law. As per Article 59 of the Schedule attached to the Limitation Act, 1963, a suit to cancel or set aside an instrument or decree is maintainable only when it is filed within a period of three years. However, since no appeal has been filed by the defendant No.1, hence, this Court refrains from entering the aforesaid issue.

12. Keeping in view the aforesaid facts and discussion, the result is inevitable. Finding no merits, the present appeal is dismissed.

13. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

September 05, 2023
“DK”

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