

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) RSA No. 1499 of 2002 (O&M)
Date of decision : February 21st, 2023

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Mukh Ram

.....Appellant

vs.

Om Parkash and others

.....Respondents

2) COCP No. 1321 of 2011 (O&M)

...

Mukh Ram

.....Petitioner

vs.

Prabhu and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Ms. Kamalpreet, Advocate for the appellant/petitioner

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H. S. Madaan, J.

1. In nutshell, the facts of the case are that, plaintiffs - Om Parkash, Parbhu, Surjeet and Nathu, sons of Atma Ram, all residents of village Peer Khera, Tehsil and District Sirsa, had brought a suit for declaration, against defendants – Mukh Ram son of Sheo Narain, Ram Chander son of Hira- since deceased, through his legal heirs –

Atma Ram and Momen sons of Hira, all residents of that very village.

2. As per case of the plaintiffs, they are owners in possession of the suit land in equal shares, in view of the Civil Court judgment and decree dated 7.12.1981 passed in Suit No. 866 of 1981, titled 'Om Parkash etc. vs. Ram Chander'. Defendant No.2 Ram Chander happens to be a real brother of father of the plaintiffs. At the time of passing of decree dated 7.12.1981, plaintiffs were minors and their father who acted as their guardian, was an illiterate person. He had trust in defendant No.2 Ram Chander, for getting the decree incorporated in the revenue record but he did not get the needful done. According to the plaintiffs, they are in cultivating and physical possession of the suit land as per respective shares. About a month prior to filing of the suit (suit was filed on 13.11.1991), when the plaintiffs approached *Halqa Patwari*, to obtain copies of latest *jamabandi* for the purpose of getting their shares in their land formally and legally partitioned, they came to know that both the defendants in collusion with each other have procured the impugned civil court decrees dated 26.11.1990 and 12.1.1991. The plaintiffs had challenged those judgments and decrees on various grounds, contending that i) since defendant No.2 was not owner of the land in question, therefore, he could not have transferred any right in the suit land in favour of defendant No.1 through the impugned decrees; ii) that defendant No.2 had played fraud because he knew very well that he was not owner of the land in question; iii) that defendant no.2 had acted mala fidely, in order to jeopardize the rights of the plaintiffs in

the suit land; iv) that defendant No.2 with mala fide and fraudulent means did not get the decree dated 7.12.1981 incorporated in favour of the plaintiffs in the revenue records and kept them and their father in the dark; v) that defendant No.1 is not related to the defendant No.2 even remotely, as he belongs to a different caste and they could not enter into a family settlement; vi) that the mutual exchange is highly unjust and an act of unsound mind; vii) that defendant No.1, on the basis of the impugned decrees and subsequent mutation No. 1727 in respect of the suit land situated in village Bhagsar, threatened to alienate such land and to disturb the peaceful possession of the plaintiffs over the same, giving rise to a cause of action to the plaintiffs to bring the present suit.

3. According to the plaintiffs, if they are not found to be in possession of the suit land or part thereof, then they are entitled to the relief of possession as well. The plaintiffs sought a declaration that they continue to be owners in possession in equal shares of suit land and impugned judgments and decrees dated 26.11.1990 and 12.1.1991, are illegal, null and void, ineffective qua the rights of plaintiffs and as a consequential relief, the defendants be restrained from alienating or transferring the suit property in any manner and from interfering into peaceful possession of the plaintiffs over the suit land.

4. On notice, the defendants appeared through counsel. Defendant No.2 had initially filed a written statement admitting claim of the plaintiffs, however, after his death, his legal heirs/

representatives, appeared and filed a written statement admitting the claim of the plaintiffs in toto. The suit was contested by defendant No.1 and in the written statement filed by him, he raised various legal objections to wit that the plaintiffs were estopped from filing the suit; the plaintiffs have filed the suit in collusion with defendant No.2 Ram Chander; no cause of action arose to the plaintiffs to bring the suit; earlier the civil court decree passed in civil suit No. 866 of 1981 titled as 'Om Parkash etc. vs. Ram Chander' is a result of fraud, misrepresentation and concealment of facts and it was neither implemented in the revenue record nor it was acted upon by the parties; that defendant No.1 is a bona fide transferee of the suit land in exchange and that the suit of the plaintiffs is bad for non-joinder and mis-joinder of parties. On merits, such defendant denied that the plaintiffs are owners in possession of the suit land. Rather he attacked that decree to be ineffective qua his rights. He further contended that defendant No.2 had no workable relations with the plaintiffs and there was not stage for him to enter into any family settlement with the plaintiffs or transfer the suit land in their favour. The plaintiffs never came into possession of the suit land and the written statement filed by defendant No.2 in favour of the plaintiffs is a fraudulent act in order to deprive defendant No.1 from the suit property. The plaintiffs have no right to challenge the impugned judgment and decree dated 12.1.1991. Defendant No.2 had not suffered any judgment and decree dated 7.12.1981 in favour of the plaintiffs.

5. Refuting the remaining allegations, he prayed for

dismissal of the suit.

6. Plaintiffs filed replication to the written statement of defendant No.1, controverting the allegations therein, whereas reiterating the averments in the plaint.

7. From the pleadings of the parties, following issues were framed :-

1. Whether the plaintiffs are entitled to the relief of declaration with consequential relief of injunction as prayed for in the head note of the plaint?

OPP

2 Whether the plaintiffs are estopped from filing the present suit by their own act and conduct?

OPD

3. Whether the plaintiffs have filed this suit in collusion and in connivance with Ram Chander defendant No.2? If so, to what effect? OPD

4. Whether the suit of the plaintiffs is bad for non-joinder of parties and misjoinder of cause of action? OPD-1

1-A. Whether the civil suit decree in civil suit No. 866 of 1981 titled as “Om Parkash etc. vs.Ram Chander” is the result of fraud, misrepresentation and concealment of facts between the plaintiffs and Ram Chander and judgment and decree dated 7.12.1981 being unregistered, unstamped against provisions of

Hindu Law, without jurisdiction and the same is not binding upon the rights of the plaintiff and is liable to be set aside? OPD.

5. Relief

8. In support of their case, the plaintiffs examined one of the plaintiffs - Om Parkash, as PW-1. Munsha Singh as PW-2, Mangat Ram as PW-3, Atma Ram as PW-4, Lakhbir Singh AVRK Record Room Sirsa, as PW-5, Rattan Lal as PW-6 and Sh. N.R. Chahar, Advocate, Sirsa as PW-7 besides tendering into evidence copies of revenue record as Exhibits P-1 to P-20 and Exhibits P-28 to P-34 and Mark -1 to Mark -27.

9. Defendant No.1 examined himself as DW-1 and further examined DW-2 Sh. Pirthi Singh, Record Keeper, DW-3 Sh. A.S. Brar, Advocate, DW-4 (again examined)Pirthi Singh, DW-5 Sh. J.S.Grerwa, Advocate and DW-6 Sh. H.S. Saharan, Advocate, besides tendering copies of *jamabandis* Exhibits D-1 and D-2.

10. In rebuttal, the plaintiff tendered documents Exhibits P-35 and P-36.

11. After hearing the arguments, the trial court decided issues No. 1 and 1-A in favour of defendant No.1 and against the plaintiffs. Issues No. 2 , 3 and 4 were decided in favour of the plaintiff, against defendants. As a result of issue wise findings, vide judgment dated 1.12.1998, the trial Court of Civil Judge (Senior Division), Sirsa, dismissed the suit of the plaintiffs.

12. Feeling aggrieved, the plaintiffs had preferred an appeal

before the District Judge, Sirsa, which was assigned to Additional District Judge, Sirsa, who vide judgment dated 19.3.2002, had accepted the appeal with costs, setting aside the judgment and decree passed by the trial Court, resultantly, decreeing the suit of the plaintiffs declaring them to be owners in possession in equal shares of the disputed property, whereas the impugned judgments and decrees in favour of defendant/respondent No.1 Mukh Ram, were held to be based upon fraud and misrepresentation of facts, as such consequently, were set aside.

13. Now it was turn of defendant No.1 to feel aggrieved and he has approached this Court by way of filing the present regular second appeal, notice of which was given to the respondents – plaintiffs, who had put in appearance earlier but subsequently, absented.

14. I have heard learned counsel for the appellants, besides going through the record.

15. The Ist Appellate Court of Additional District Judge, Sirsa, in light of the pleadings of the parties, considering the settled legal position by analyzing the evidence adduced by the parties minutely and deeply, had found the plaintiffs entitled to the relief claimed.

16. The Ist Appellate Court of learned Additional District Judge, Sirsa, found itself in dis-agreement with the trial Court and resultantly set aside the judgment and decree passed by the trial Court. The judgment of trial Court was based upon misappraisal of

evidence and wrong interpretation of law. I do not find any illegality in the judgment and decree passed by the Ist Appellate Court or infirmity therewith, so as to interfere with such judgment and decree.

17. The plaintiffs have successfully proved that defendant No.2 Ram Chander who was their uncle, had suffered the judgment and decree dated 7.12.1981 in their favour, copy of which being Exhibit P-23. After suffering that decree, Ram Chander was not left with any right or title in the land which was subject matter of the decree and he could not have possibly entered into any exchange with defendant No.1 or suffer any decree in civil suit bearing No. 201/1990, filed by defendant No.1 against him. The law is well settled that no person can transfer a better title than what he possesses. Merely because decree dated 7.12.1981, was not reported to the revenue officials and was not got incorporated in the revenue record by sanctioning the mutation on basis thereof, does not mean that it did not exist. The law is well settled that jamabandi is not a document of title and it is prepared primarily for fiscal purposes. On the other hand, decree passed by the Civil Court does result in transfer of title. The plaintiffs cannot be condemned for not having got the mutation sanctioned in their favour on the basis of decree dated 7.12.1981 Exhibit P-23. They have rendered a sufficient explanation that they were minors at the time when such decree was passed, as such could not approach the Halqa Patwari for sanctioning of mutation in their favour. The legal position is quite clear that mutation does not confer any title. Therefore, non-entering of the

mutation on the basis of decree Exhibit P-23, cannot be taken to be a circumstance against the plaintiffs. Although learned counsel for the appellants has tried to condemn decree Exhibit P-23, but the appellant has no right or title to do so because that decree is prior in time, than the decree in his favour said to have been suffered by defendant No.2 in the year 1990. During his life time, defendant No.2 Ram Chander had not challenged the said judgment and decree. Only Ram Chander could have questioned the legality and validity of the decree by saying that he had not admitted the claim of the plaintiffs in that suit or that it was procured by mis-representation or fraud or by impersonation. But Ram Chander did not approach the Court with any such plea during his life time. The appellant-defendant is nobody to raise his little finger in that regard.

18. It has to be taken note of that plaintiffs are nephews of defendant No.2, as such closely related and there was every probability of defendant No.2 suffering a consent decree in favour of the plaintiffs.

19. The regular second appeal is found to be without any merit. No substantial question of law arises in the present appeal. The same stands dismissed accordingly.

20. Since the plaintiffs have been found to be in possession of the suit land as owners and the status quo order passed in this case regarding possession on 8.4.2002, merges with the final order, which is dismissal of the regular second appeal, no action against respondents – plaintiffs is required to be taken or pursued for alleged

disobedience of the order passed by this Court.

21. As a matter of fact no disobedience on their part is established to have been so done by the plaintiffs. The COCP is also dismissed.

February 21st, 2023
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(H.S. Madaan)
Judge

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