

2023:PHHC:157518

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126

RSA-2633-2019
Date of Decision: 08.12.2023.

KULDEEP SINGH AND OTHERS

.....APPELLANTS

VS

NIHAL SINGH AND OTHERS

...RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jhanji, Sr. Advocate with
Ms. Priyanka Kansal, Advocate
for the appellants.

Mr. Vijay Kumar Jindal, Sr. Advocate with
Mr. S.S. Sidhu, Advocate and
Mr. Vrishank Suri, Advocate
for respondent Nos. 1 to 3.

ANIL KSHETARPAL, J. (ORAL)

1. In this regular second appeal, the correctness of concurrent finding of the facts arrived at by the Courts below, are assailed by the defendants. The plaintiffs' suit for the grant of decree of possession of land measuring 116 kanals and 6 marlas being 2326/12643 share has been decreed.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed Santokh Singh son of Dona Singh was co-owner to the extent of 116 Kanals and 06 Marlas of agriculture land located in Village Manghera, Tehsil Tohana and District Fatehabad. He died on 15.05.1990. It is the case of the plaintiffs that they are settled in Dubai and whenever they used to come back, the defendants who were given the possession of the property used to pay them some amount

towards use and occupation of the land. It is also the case of the plaintiffs

that in July, 2013, they demanded the amount from the defendants which was refused. The defendants claimed that they have become the owner of the property. After the investigation and search of the record, it came to their notice that defendants have got the judgment and decree passed in their favour on 08.11.1982 on the basis of family settlement with Santokh Singh. It was asserted that the defendants have played fraud and the judgment and decree is the result of impersonation as Santokh Singh neither suffered any statement nor appeared in the Court. Defendants while contesting the suit claimed that the judgment and decree passed on 08.11.1982 is a valid decree and Santokh Singh did suffer the aforesaid decree.

3. Both the Courts on appreciation of evidence have concurrently come to the conclusion that deceased Santokh Singh was impersonated. Both the Courts have also held that the aforesaid judgment and decree has been obtained by alleging incorrect facts. It has been found that Santokh Singh's grandfather was Khajan Singh and not Duna Singh and the defendants wrongly stated that the Santokh Singh's grandfather was Duna Singh. It also came to the knowledge that the given postal address of Santokh Singh in the plaint was incorrect. The plaintiff's in order to prove that Santokh Singh never appeared in the Court and suffered decree on 08.11.1982 relied upon the report of handwriting and finger print expert Randhir Singh (PW-5). He has opined that Santokh Singh did not thumb mark the written statement. It also came to notice that he neither appeared in the Court to depose and nor engaged any counsel.

4. Heard the learned counsel representing the parties at length and perused the paper book along with requisite record.

5. Learned Senior counsel representing the appellant contends that the suit filed by the plaintiffs was barred by limitation as per decree dated 08.11.1982 was required to be challenged within a period of three years whereas the suit was filed on 08.09.2014. He further contends that the plaintiffs have failed to prove that the name of Santokh Singh's grandfather was Khajan Singh and not Duna Singh. The reports submitted by the handwriting and finger print expert are said to be not reliable as he has compared the thumb impression from the photocopy of the sale deed allegedly executed by Santokh Singh in the year 1984. At the end it was contended that the plaintiffs being co-sharers are not entitled to the decree for specific possession of 116 kanals and 6 Marlas of land.

6. On other hand, learned Senior counsel representing the respondents contend that the plaintiffs have alleged fraud by the defendants. It is submitted that as per Section 17 of the Limitation Act, 1963, the period of limitation will not begin to run until the plaintiffs have discovered fraud. It is contended by the learned counsel that the plaintiffs came to know of the fraud decree only in the year 2013 whereas, the suit was filed in the year 2014. It is further contended that the plaintiffs have proved that name of the Santokh Singh's grandfather was Khajan Singh by producing the sale deed executed by Santokh Singh in the year 1984 and when plaintiff No.1 appeared in evidence, the defendants did not question the witness on this aspect of the matter. It is further contended that handwriting and finger print expert in fact had examined the second original copy of the sale deed executed on 15.03.1984 which was available in the office of Joint Sub Registrar, Phillaur. Hence, handwriting and finger print expert had seen the original document. Towards the end learned Senior counsel submits that in

the given facts of the case the Court should grant decree of possession because a fraud has been played by the defendants.

7. This Court has analysed the arguments of learned counsel representing the parties and perused the judgments of the Courts below along with requisitioned record.

8. With reference to the First argument of learned counsel representing the appellant it is noted that Section 17 of Limitation Act itself provides that limitation would begin to run only when the fact of fraud being committed to him comes to the knowledge of the plaintiff. If a document is executed by impersonation the same is considered to be a piece of fraud.

9. It is a positive case of the plaintiffs that they got the knowledge of the alleged fraudulent decree in the year 2013. The defendants failed to lead the evidence to prove that the plaintiffs had prior knowledge of the decree. Moreover, both the Courts, on appreciation of evidence, had found that the suit filed by the plaintiff was not barred by limitation. With reference to the second argument of learned counsel representing the appellant, it would be noted that the plaintiffs produced a registered sale deed dated 15.03.1984 executed by Santokh Singh. In the aforesaid sale deed, the name of Santokh Singh's grandfather is Khajan Singh. Moreover, Nihal Singh plaintiff No.1, appeared in evidence, deposed as PW-3. In the examination-in-chief it is stated that the name of Santokh Singh's grandfather was Khajan Singh. However, the correctness of aforesaid statement of Nihal Singh was not challenged by the defendants. Given the fact that correctness of such statement is not challenged, the correctness of that part of statement is deemed to be admitted.

10. Still further, the plaintiffs have produced a pedigree table prepared by the revenue authorities. They have also examined the Sarpanch of the Village, who has stated that the name of Santokh Singh's grandfather was Khajan Singh and not Duna Singh.

11. With reference to the next arguments of learned counsel representing the appellant, it will be noted that the report of the handwriting and finger print expert is Ex.PW-5/1. It has specific recital that he has taken photographs from the second original copy of sale deed dated 15.03.1984, which was available in the office of Sub Registrar, Phillaur. The correctness of aforesaid fact not has been challenged.

12. The last submission of learned counsel representing the appellant has got substance. It is the case of plaintiffs that they are co-sharers/co-owners with the defendants. The total joint land in the khewat measures 3492 kanals and 02 Marlas.

13. In these circumstances, the plaintiff can be granted a decree for joint possession. He can apply for delivery of the actual possession after the land is partitioned. At this stage, it will not appropriate to pass decree for possession because the same cannot be executed in the absence of partition of the disputed property.

14. With these observations the judgment and decree passed by the Courts below is modified. The plaintiff shall be entitled to decree.

15. The present appeal stands disposed of. All pending miscellaneous applications, if any, stand disposed of.

(ANIL KSHETARPAL)
JUDGE

08.12.2023

pry

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No