IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3232-2011(O&M)
Date of decision:-9.1.2023

Smt.Dharmo Devi and another

...Appellants

Versus

Mai Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Karamveer Singh Banyana, Advocate
for the appellants.

None for the respondents.

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H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Mai Ram alias Lila Ram, Jai Pal sons of Sh.Atu alias Atu Ram, residents of village Barsalu, Tehsil Nilokheri, District Karnal and Smt.Dharmo Devi daughter of Sh.Atu alias Atu Ram wife of Sh.Jogi Ram, resident of village Jalmana, Tehsil Assandh, District Karnal had brought a suit against defendants i.e. Pannu Ram, Man Singh, Dhan Singh (now deceased) represented by his legal representatives (a) Sawitri Devi widow of Sh.Dhan Singh (b) Jeeto Devi (c) Sheela Devi (d) Baldevi daughters of Sh.Dhan Singh (e) Dharambir (f) Bir Singh (g) Krishan Kumar sons of Sh.Dhan Singh, resident of village Barsalu, Tehsil Nilokheri, District Karnal and Mohan Lal son of Sh.Atu, all residents of village Barsalu, Tehsil and District

BRIJ MOHAN
2023.01.10 15:47
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Karnal further impleading Sm.Phoi Devi wife of Sh.Sudhan daughters of Sh.Atu resident of village Jhinjari, Tehsil Shahabad, District Kurukshetra, Savitri Devi wife of Ranjit Singh son of Ram Kishan daughter of Smt.Chameli (deceased) daughter of Sh.Atu alias Atu Ram resident of village Meeran Ji – ka Thaska, Tehsil Ismailabad, District Kurukshetra as proforma defendants, seeking a declaration that civil Court decree and judgment dated 28.7.1975 passed in Civil Suit No.382 of 1975 titled as 'Punnu Ram and others Versus Atu' passed by Sub Judge Ist Class, Karnal are illegal, null and void not binding on the rights of the plaintiffs qua their ½ share in the land of Atu; further seeking a decree for joint possession and setting aside of mutation No.476 besides a restraint order against defendants from alienating the suit land in any manner.

2. *Inter alia* in the suit, the plaintiffs pleaded that Sh.Atu (since dead) father of the plaintiffs as well as defendants No.1 to 5 and maternal grandfather of defendant No.6 had performed two marriages firstly with Smt.Kreshni, who was mother of defendants No.1 to 5 and grandmother of defendant No.6 and the second with Smt.Kishni, mother of plaintiffs; the reason for performing the second marriage by Sh.Atu was that no child was born from his wedlock with Sm.Kreshni for 10-12 years; when Sh.Atu contracted a second marriage with Smt.Kishni, mother of the plaintiffs, it was settled in the Panchayat that children born from that marriage would be entitled to equal share in the property of Sh.Atu and that both the wives and children will live together having a joint mess; in that way, they constituted a joint Hindu family and marriages of the children were also performed from the joint family funds; Sh.Atu had

BRIJ MOHAN
2023.01.10 15:47
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purchased land measuring 119 kanals 18 marlas vide two sale deeds dated 13.12.1962 and 3.1.1967 out of the joint family funds and when the land was purchased in the name of Sh.Atu, the plaintiffs were also working as agricultural labourer and had contributed money for purchase of that land, therefore, the plaintiffs became entitled to get equal share in the said landed property; the land was cultivated by the plaintiffs along with the defendants and their father Sh.Atu jointly during lifetime of Sh.Atu and after his death by the parties together and they used to take ½ share each; in the month of March, 2003, the plaintiffs consulted the defendants regarding the loan for tractor against their ½ share but the defendants instead of giving consent told the plaintiffs that they had no share in the suit land because the defendants had become the owners of the entire land on the basis of decree passed by the Civil Court; the plaintiffs were surprised to hear about that and they made enquiry when they came to know that a decree passed in Civil Suit No.382/75 had been procured by defendants No.1 to 4 and mutation No.476 dated 5.9.1975 had been entered and sanctioned in their favour.

Feeling aggrieved, the plaintiffs had filed a suit before the Court challenging the impugned judgment and decree as well as mutation sanctioned on the basis thereof and entries incorporated in subsequent jamabandies contending that Sh.Atu used to remain ill and was not in a position to travel; he had not engaged any counsel and had not filed any written statement admitting the claim of the plaintiffs in that suit and the alleged decree must have been obtained by the defendants by producing someone else in place of Sh.Atu; as a matter of fact no family settlement

BRIJ MOHAN
2023.01.10 15:47
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HIgh Court, Chandigarh

ever took place because Sh.Atu after death of his wife Kreshni, mother of defendants was living with mother of plaintiffs, therefore, it is unbelievable that any such family settlement had taken place in absence of the plaintiffs or their mother and rather it is against the provisions of Registration Act and Transfer of Property Act not conferring any right, title or interest to any person. It was after death of Sh.Atu that a dispute arose between the parties regarding the inheritance of land and only in the month of March, 2003, the judgment and decree were disclosed to the plaintiffs.

3. On getting notice of the suit, the defendants No.1 to 4 appeared and filed written statement contesting the suit raising preliminary objections with regard to the plaintiffs being estopped by their own act and conduct from filing the suit; the suit being time barred; the plaintiffs lacking locus standi to bring the suit in question; the suit being abuse of process of law; the suit being not properly valued for the purpose of Court fee and jurisdiction etc. On merits, the defendants contended that Sh.Atu had married only once that is with Smt.Kreshni and from that wedlock defendants No.1 to 5 and Chameli mother of defendant No.6 were born. It was denied that Sh.Atu had got married with Kishni or that the plaintiffs are sons of Sh.Atu born from the womb of Kishni. It was further denied that any Panchayat had been convened, where it was decided that two wives and the children would live together in a joint mess or that the land in question was purchased from the joint Hindu family funds contributed and raised by Sh.Atu and defendants No.1 to 4. It was stated that defendants had been cultivating the land with their

BRIJ MOHAN
2023.01.10 15:47
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HIgh Court, Chandigarh

father prior to the family settlement arrived at in the month of January 1975 on the basis of that, the decree in question was passed in favour of the defendants. The answering defendants claimed that they are owners in possession of the suit land in equal shares with which the plaintiffs have no concern; the plaintiffs were aware of the decree right from the beginning; the impugned judgment and decree were defended as legal and valid stating Sh.Atu himself had appeared before the Court along with his counsel, filing written statement and making statement in the Court admitting the claim of the plaintiffs in that suit, therefore, the decree was passed in favour of the defendants. Refuting the remaining assertions, the defendants prayed for dismissal of the suit.

4. The plaintiffs had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint. On the pleadings of the parties, following issues were framed:

1. Whether Civil Court Decree passed in Civil Suit No.382/75 on 28.07.75 in case titled Punnu Ram etc. Vs. Attu in favour of defendants No.1 to 4 and mutation No.476 sanctioned in favour of defendants is void, not binding on the rights of plaintiff and liable to be set aside on the grounds mentioned in para No.1 of the plaint? OPP
2. Whether the plaintiffs are entitled for decree for injunction as prayed for?OPP
3. Whether the suit is not maintainable? OPD
4. Whether the plaintiff have no locus-standi to file the present suit? OPD

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2023.01.10 15:47
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5. Whether the suit is time barred? OPD
6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD
7. Whether the suit is bad for want of court fee and jurisdiction?OPD
8. Relief.

5. The parties led evidence in support of their respective claims.

During the course of their evidence, the plaintiffs examined Jai Kishan, ADRK as PW1, Dulia Ram Kanungo Election Officer as PW2, Balbir Singh Deed-writer as PW3, Bachna Ram as PW4, Phool Singh as PW5 and Des Raj as PW6. The plaintiff Mai Singh got his own statement recorded as PW7. The learned counsel for the plaintiffs tendered in evidence certified copy of plaint Ex.P2, written statement Ex.P3, statement Ex.P4, copy of order dated 28.07.75 Ex.P5, copy of decree-sheet Ex.P6, copy of jamabandi for the year 1996-97 Ex.P7, copy of jamabandi Ex.P8, photo copy of birth certificate Mark-D, copy of jamabandi for the year 2001-2002 Ex.P9, photocopy of allotment Mark-E and Mark-F, mutation Mark-G.

With that the evidence of the plaintiffs stood closed.

In rebuttal, the defendants examined Shri V.K. Jain, Advocate as DW1, Dhan Singh as DW2. Punnu Ram as DW3 (wrongly mentioned as DW2), Mani Ram as DW4 (wrongly mentioned as DW3). The learned counsel for the defendants tendered in evidence copy of plaint Ex.D2, certified copy of written statement Ex.D3, certified copy of statement Ex.D4, statement of Shri K.S. Bajwan Advocate dated 28.07.75 Ex.D5, copy of judgment Ex.D6, copy of decree sheet Ex.D7, Birth and

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2023.01.10 15:47
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death certificate Ex.D8, copy of jamabandi for the year 1976-77 Ex.D9, copy of jamabandi for the year 1996-97 Ex.D10, copy of jamabandi for the year 2001-2002 Ex.D11 and copy of mutation Ex.D12.

With that the evidence of the defendants got concluded.

6. After hearing learned counsel for the parties, the trial Court decided issues No.1 and 2 against the plaintiffs, issue No.5 was decided in favour of the defendants, whereas issues No.3, 4, 6 and 7 were decided against the defendants being not pressed. As a result of findings on issues, the suit of the plaintiffs was dismissed with no order as to costs. This was so done vide judgment and decree dated 28.4.2009.

7. Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Karnal, which was assigned to Additional District Judge, Karnal, who vide judgment and decree dated 16.4.2011 dismissed the same.

8. Still feeling dissatisfied, the plaintiffs have knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and their suit be decreed.

9. Notice of the appeal was issued to the respondents. Initially respondents No.1 to 4 have put in appearance through counsel. However, later on there was no representation on their behalf.

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

11. Here the trial Court in light of the pleadings of the parties and detailed analysis of the evidence brought on record by them, had made

BRIJ MOHAN
2023.01.10 15:47
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HIgh Court, Chandigarh

observations that plaintiffs have failed to establish that Sh.Atu had got married with their mother Smt.Kishni or that the plaintiffs were born from that alleged wedlock. Further the plaintiffs have been unable to establish that the decree said to have been suffered by Sh.Atu in favour of the his sons i.e. defendants No.1 to 4 on 28.7.1975 was result of fraud and misrepresentation or impersonation. Rather the defendants have led evidence to establish that Sh.Atu had engaged a counsel and filed written statement thumb marked the same in which he had admitted the claim of his sons, who are defendants No.1 to 4 in this case. DW1 Sh.V.K. Jain, Advocate had stated that he had represented Sh.Atu in civil suit No.382/75 and had filed a written statement thumb marked by Sh.Atu and signed by him as his counsel. The statement of Sh.Atu was recorded in the Court, where this witness i.e. Sh.VK Jain, Advocate had identified Sh.Atu being his counsel, copy of that statement being Ex.D4. There being no reason to disbelieve statement of DW1 Sh.V.K. Jain, Advocate, it stands established that it was Sh.Atu, who had appeared in the Court, filing written statement conceding the claim of his sons, who are defendants No.1 to 4 in the civil suit suit in question and he had further made a statement in the Court admitting the claim of the defendants, thumb marked that statement, which was countersigned by his counsel Sh.V.K. Jain, Advocate in token of identification. Thus, the allegations that Sh.Atu had neither appeared in person nor through counsel or filed written statement admitting claim of the plaintiffs or had got his statement recorded in that regard stand falsified.

12. As regards the case set up by the present plaintiffs that the

BRIJ MOHAN
2023.01.10 15:47
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HIgh Court, Chandigarh

suit land had been purchased by Sh.Atu in his own name out of joint family funds, since the plaintiffs were unable to establish that they are sons of Sh.Atu or that they constituted any joint family along with Sh.Atu and defendants No.1 to 4 or that they used to pool their income and spend money therefrom, such assertions could not be possibly taken to have been established. The plaintiffs have further been unable to show that decree suffered by Sh.Atu was result of fraud and misrepresentation played by defendants upon them.

13. Furthermore, the suit filed by the plaintiffs was hopelessly time barred. The judgment and decree dated 28.7.1975 having been challenged on 11.4.2003 i.e. after a period of more than 27 years, the suit is hopelessly time barred. Though the plaintiffs tried to wriggle out of the bar of Section 3 of the Limitation Act, which provides that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence, stating that the plaintiffs came to know about the decree in March, 2003 only but that explanation is least convincing and is unacceptable. As has been rightly observed by the trial Court suit is clearly barred by limitation and deserved dismissal on that score alone.

14. Learned Additional District Judge, Karnal had also reached the similar conclusion affirming the findings recorded by the trial Court and dismissed the appeal.

15. I find that the findings given by the Courts below are based upon proper appreciation and correct interpretation of law. Both the Courts had rejected the claim of the plaintiffs. I do not see any reason to

BRIJ MOHAN
2023.01.10 15:47
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disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees. Those judgments and decrees are upheld.

16. No substantial question of law or fact arises in this appeal.

17. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

9.1.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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2023.01.10 15:47
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