

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4932-2014(O&M)

Reserved on:- 09.08.2023

Pronounced on:- 03.10.2023

Rameshwar Dass

....Appellant

Versus

Rohtash and Ors.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Ms. Rupinder Kaur Thind, Advocate
for the appellant.

Mr. R.N.Lohan, Advocate
for the respondents No.1 to 5.

None for performa respondents No.6 and 7.

AMARJOT BHATTI, J.

1. The appellant-Rameshwar Dass has filed appeal against impugned judgment and decree dated 04.02.2014 passed by learned District Judge, Fatehabad whereby the judgment and decree dated 09.12.2011 passed by Additional Civil Judge (Sr. Division), Fatehabad has been set aside, which is wrong, against the evidence and the law and the same is liable to be set aside.

2. As per the facts of the case, Rameshwar Dass appellant/plaintiff had filed suit for declaration to the effect that judgment and decree dated 23.07.1983 in Civil Suit No.409 of 1983 titled as "*Narsi Ram Vs. Birbal*" for declaration that the judgment passed by the Court of Sh. N.C.Nahra, HCS, Additional Senior Sub Judge, Fatehabad regarding 1 kanal 8 marlas of land being ½ share of total land measuring 2 kanals 16 marlas bearing Khasra No.461 (2-16) gair mumkin plot situated in village

Dhangar, Tehsil and District Fatehabad passed in favour of Narsi Ram predecessor in interest of defendants allegedly suffered by Birbal is wrong against the law and the facts, by way of cheating, fraud and misrepresentation and the same is not binding on the rights of the plaintiff and performa defendants and mutation No.3035 dated 31.12.1986 sanctioned on the basis of aforesaid judgment and decree dated 23.07.1983 incorporated and sanctioned in favour of Narsi Ram in the revenue record is also wrong, against the law, without notice, sanctioned secretly and the same is null and void and is liable to be set aside and the jamabandis for the year 1985-1986, 1990-1991, 1995-1996, 2000-2001, 2005-2006 prepared on the basis of aforesaid mutation are also wrong and liable to be corrected in their favour and the plaintiff and performa defendants No.7 & 8 are owners in possession of 1 kanal 8 marlas gair mumkin plot situated at village Dhangar on the basis of Will No. 127 dated 05.10.1999 along with the suit for permanent injunction as detailed in the head note of the plaint.

3. The facts of the case are that Birbal father of plaintiff and performa defendants No.7 & 8 was owner in possession of gair mumkin plot bearing Khasra No.461 (2-16) to the extent of $\frac{1}{2}$ share i.e. 1 kanal 8 marlas situated in village Dhangar, Tehsil and District Fatehabad. The said Birbal during his life time remained owner in possession of the plot along with other properties. Birbal expired on 21.05.2006 and the plaintiff and performa defendants No.7 & 8 became owners of the property on the basis of registered Will No.127 dated 05.10.1999. Said Birbal never suffered any statement in favour of Narsi Ram regarding the plot in dispute. Narsi Ram now deceased filed Civil Suit No.409 of 1983 titled as “*Narsi Ram Vs. Birbal*” regarding the plot in question and got a decree

dated 23.07.1983 in his favour which is result of fraud. Birbal never appeared in that case nor he gave vakalatnama in favour of any advocate neither filed the written statement. Narsi Ram managed to get the statement recorded of some other person and got a decree in his favour by way of fraud and misrepresentation. Therefore, the said judgment and decree dated 23.07.1983 is liable to be set aside and the mutation No.3035 dated 31.12.1986 got sanctioned on the basis of aforesaid judgment and decree is also wrong, null and void and the same is liable to be set aside and the subsequent revenue record incorporated in the name of Narsi Ram on the basis of aforesaid mutation No.3035 is liable to be corrected. Birbal remained owner in possession of the plot in dispute during his lifetime and after his death, the plaintiff and performa defendants No.7 & 8 became owners on the basis of registered Will No.127 dated 05.10.1999. It is further pointed out that the aforesaid judgment and decree dated 23.07.1983 was never got registered, therefore there was no valid title in favour of Narsi Ram or his predecessor in interest. The dispute started when the defendants tried to raise construction over the plot in dispute and they came to know about the aforesaid judgment and decree dated 23.07.1983 on the basis of which mutation No.3035 was sanctioned. A Panchayat was convened, requesting the defendants to admit their claim but they refused and ultimately the present suit was filed.

4. Notice of the suit was given to the defendants. The defendants No. 2 to 4 appeared and contested the suit. They filed their written statement taking preliminary objection that the suit filed by the plaintiff was false, frivolous, against the law and the facts. He had no cause of action to file the present suit nor he had any *locus standi* to file the suit against the answering defendants. The suit was not maintainable. The

defendant No.1 Shanti Devi was very old illiterate and rustic villager. She was not having any knowledge regarding the family settlement which took place between the uncle and nephew. Khyali Ram and Birbal were real brothers. Narsi Ram s/o Khyali Ram and Birbal had purchased the land in equal shares. Birbal was an educated person, he got entered his name in the sale deed more than his share i.e 6 kanals 0 marlas. Narsi Ram came to know about this fact that the land was not incorporated in equal shares, Narsi Ram raised objection and a family settlement took place between Narsi Ram and Birbal. As per the family settlement, the plot measuring 1 kanal 8 marlas of Birbal was transferred in the name of Narsi Ram. In the civil suit filed by Narsi Ram, Birbal defendant appeared and admitted his claim in the written statement. He also appeared in the court and gave his statement to this effect. The defendants are having no knowledge whether late Birbal used to put his signatures or thumb impression. A person who can sign can also put his thumb impression. Both Balbir and Narsi Ram have expired. The answering defendants are in possession of plot in dispute since the year 1983. The plaintiff had not come to the Court with clean hands. The suit filed by the plaintiff was time barred. He was estopped by his own act and conduct. It was prayed that the suit filed by the plaintiff is liable to be dismissed with special cost. The stand taken by plaintiff on merits was specifically denied. It was prayed that a false and frivolous suit has been filed to grab their property with a prayer that the suit filed by the plaintiff was liable to be dismissed.

4. Replication was filed, in which the plaintiff reiterated the facts stated in the plaint and denied the averments made in the written statement. From the pleadings of the parties, following issues were framed on 12.01.2010:-

- i Whether the plaintiff is entitled to the declaration as prayed for? OPP
- ii Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP
- iii Whether the suit of the plaintiff is not maintainable in the present form? OPD
- iv Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD
- v Whether the plaintiff is stopped by his own act and conduct from filing the present suit? OPD
- vi Whether the suit is barred by limitation? OPD
- vii Whether the plaintiff has not come to the court with clean hands and concealed the material facts? OPD
- viii Relief.

5. In order to prove the suit, the plaintiff examined himself as PW2 besides producing Ankush Kumar Clerk as PW1, Krishan Kumar as PW3, Shamsher Singh Malik, Handwriting and Finger Prints Expert as PW4, Vijay Singh, Registry Clerk as PW5, Satpal, Deed Writer as PW6, Bajrang Dass as PW7 and tendered documents Ex.P1 to Ex.P13 and closed his evidence.

6. In order to rebut the evidence of the plaintiff, the defendant Krishan Kumar himself stepped into the witness box as DW-1 and tendered documents Ex.D1 to Ex.D3. Thereafter, defendants closed the evidence.

7. After hearing the arguments advanced by learned counsel for the parties, the suit filed by the plaintiff Rameshwar Dass was decreed vide judgment and decree dated 09.12.2011 passed by the then Additional Civil Judge (Senior Division) Fatehabad. Feeling aggrieved of the aforesaid judgment and decree, Smt Shanti Devi and others had filed Civil Appeal

performa defendants/respondents, which was allowed vide judgment and decree dated 04.02.2014. Feeling aggrieved of this judgment and decree, the appellant/plaintiff has filed regular second appeal.

8. I have heard the arguments advanced by learned counsel for the appellant/plaintiff, learned counsel for the respondent/defendants No. 2 to 6 and have carefully gone through the trial court record.

The learned counsel for the appellant/plaintiff argued that the facts of the case and the evidence on record were not rightly considered by the District Judge Fatehabad and well reasoned judgment and decree dated 09.12.2011 passed by Additional Civil Judge (Senior Division), Fatehabad has been wrongly set aside. The appellant/plaintiff had filed suit for declaration regarding gair mumkin plot bearing Khasra No.461 measuring 2 kanals 16 marlas along with relief of permanent injunction and he had challenged the judgment and decree dated 23.07.1983 passed in Civil Suit No.409 of 1983 titled as "*Narsi Ram Vs. Birbal*". The aforesaid judgment and decree passed by the then Additional Civil Judge (Senior Division), Fatehabad is wrong and it is the result of fraud. Birbal their predecessor never appeared in that case nor he filed his written statement admitting the claim of Narsi Ram. The written statement and the Vakalatnama allegedly filed by him did not bear his thumb impression. Said Birbal was an educated person and he never used to put his thumb impression. He did not appear in the court to suffer any statement regarding the alleged family settlement. Narsi Ram procured the presence of some other person and got his statement recorded and he managed to procure decree dated 23.07.1983 in his favour. The mutation No.3035 and the subsequent revenue record changed on the basis of said mutation are also challenged by the appellant/plaintiff by filing the present suit. In fact Birbal and after his

death the appellant and performa defendants No.7 and 8 remained in possession of this plot. Rameshwar Dass as PW2 has stepped into the witness box to prove his version. He has examined Ankush Kumar, Clerk Record Room, DC Office, Fatehabad as PW1, who produced the file bearing case No.409/09.06.1983 titled as "*Narsi Ram Vs. Birbal*". The copy of plaint is Ex.P3, copy of written statement is Ex.P4, copy of alleged statement of Birbal is Ex.P5, copy of alleged Vakalatnama thumb marked by Birbal is Ex.P6, Vakalatnama of Narsi Ram is Ex.P7 and the challenged judgment and decree dated 23.07.1983 is Ex.P8 and P9 respectively. The copy of mutation No.3035 is also placed on record as Ex.P10 and copy of jamabandi for the year 2005-06 is Ex.P11. The learned counsel for appellant/plaintiff referred to the testimony of Vijay Singh, Registry Clerk PW3 who produced the record of registered Will No.127 dated 05.10.1999 Mark- D. Satpal, Deed Writer PW6 who scribed the Will and Bajrang Dass PW7 who is one of marginal witness of the aforesaid Will further confirmed the execution of Will by Birbal in favour of the appellant/plaintiff and the performa defendants.

It is argued that there was sufficient evidence on record to show that Birbal bequeathed the aforesaid plot in favour of the plaintiff and performa defendants by executing Will No.127 dated 05.10.1999 which is Mark-D. The judgment and decree dated 23.07.1983 Ex.P8 and Ex.P9 and mutation No.3035 Ex.P10 sanctioned on the basis of aforesaid judgment and decree does not affect the right, title and interest of the appellant/plaintiff along with performa defendants. The appellant plaintiff had also examined Shamsher Singh Malik, Handwriting and Finger Print Expert as PW4 who had compared the questioned thumb impression, on the written statement, alleged statement of Birbal and alleged Vakalatnama

by Birbal with his specimen thumb impression on the Will dated 05.10.1999 and gave his detailed report Ex.PW 4/B along with the photographic chart Ex.PW4/C1 to PW4/C6 and came to the conclusion that the questioned thumb impressions did not match with the specimen thumb impression. The learned District Judge, Fatehabad while passing the impugned judgment dated 04.02.2014 has wrongly ignored and discarded the testimony of Shamsher Singh Malik, Handwriting and Finger Print Expert PW4. Infact the judgment and decree dated 09.12.2011 passed by learned Additional Civil Judge (Senior Division), Fatehabad is well reasoned judgment and has been wrongly reversed by the District Judge, Fatehabad by passing impugned judgment and decree dated 04.02.2014. It is played that appeal preferred by the appellant/plaintiff may kindly be accepted and the judgment and decree dated 04.02.2014 passed by the then District Judge Fatehabad may kindly be set aside by upholding the judgment and decree dated 09.12.2011 passed by the then Additional Civil Judge (Senior Division), Fatehabad.

9. Learned counsel for the respondents/defendants No.1 to 5 pointed out that the facts of the case and the evidence on record was rightly considered by learned District Judge, Fatehabad by passing judgment and decree dated 04.02.2014. The appellant/plaintiff has no right to challenge the judgment and decree dated 23.07.1983 passed in Civil Suit No.409 of 1983 titled as "*Narsi Ram Vs. Birbal*". On the basis of this judgment and decree, mutation No.3035 was sanctioned on 31.12.1986 and it was duly incorporated in the revenue record. Till filing of this suit in the year 2009, the aforesaid judgment and decree dated 23.07.1983 or the mutation and the revenue record were never challenged either by Birbal or his successor i.e. the appellant/plaintiff. The suit filed by the

appellant/plaintiff was hopelessly time barred. It was the respondents/defendants who became owner in possession of the property after the death of their predecessor Narsi Ram. There is no convincing evidence on record to prove the execution of said Will dated 05.10.1999. The learned District Judge Fatehabad while passing impugned judgement dated 04.02.2014 rightly appreciated the statement of Shamsheer Singh Malik, Handwriting and Finger Print Expert PW 4 as well as his report Ex.PW4/B. The report of Shamsheer Singh Malik PW 4 was discarded and it was rightly concluded that the suit filed by the plaintiff seeking declaration challenging the judgment and decree dated 23.07.1983 was hopelessly barred by limitation. Therefore, the judgment and decree dated 04.02.2014 passed by the District Judge, Fatehabad does not require any interference and the appeal preferred by the appellant/plaintiff may kindly be dismissed.

10. I have considered the arguments advanced by learned counsel for both the parties and have gone through the trial court record carefully. In the case in hand Rameshwar Dass filed suit for declaration challenging the judgment and degree dated 23.07.1983 passed in Civil Suit No.409 of 1983 titled as "*Narsi Ram Vs. Birbal*" regarding declaration passed by the court of Sh. N.C.Nehra, HCS, Additional Senior Sub Judge, Fatehabad regarding 1 kanal 8 marlas of land being $\frac{1}{2}$ share of total land measuring 2 kanals 16 marlas bearing Khasra No.461 gair mumkin plot situated in Village Dhangar, Tehsil and District Fatehabad in favour of Narsi Ram allegedly suffered by Birbal, as illegal, null and void, result of fraud and mis-representation and also challenged mutation No.3035 dated 31.12.1986 sanctioned on the basis of aforesaid judgment and decree dated

23.07.1983 as well as the subsequent revenue record which was changed on the basis of aforesaid mutation.

The learned District Judge, Fatehabad has prepared pedigree table to understand the relationship between Birbal and Narsi Ram. According to this pedigree table, Birbal was uncle of Narsi Ram who was son of his real brother Khyali Ram. Therefore, both Birbal and Narsi Ram were uncle and nephew in relation. The plaintiff Rameshwar Dass along with performa defendants No.7 and 8 are the successors of Birbal whereas the defendants No.1 to 6 are the successors of Narsi Ram. As per record, Narsi Ram had filed Civil Suit No.409 of 1983. The copy of plaint is Ex.P3, the copy of written statement allegedly thumb marked by Birbal and his statement recorded in the court are Ex.P4 and P5 respectively. The copy of Vakalatnama bearing thumb impression of Birbal is Ex.P6 and Vakalatnama of Narsi Ram is Ex.P7, the copy of judgment and decree dated 23.07.1983 is Ex. P8 and Ex.P9 respectively. Admittedly, the present suit for declaration was filed on 04.08.2009 challenging the aforesaid judgment and decree dated 23.7.1983 after a period of more than 26 years. It is matter of record that Birbal during his lifetime never challenged the aforesaid judgment and decree dated 23.07.1983. Even mutation No.3035 dated 31.12.1986 was sanctioned. Copy of mutation is Ex.P10 and thereafter this mutation was duly incorporated in the subsequent revenue record. Said Birbal died on 21.05.2006 i.e. after a period of more than 22 years from the passing of impugned judgment and decree dated 23.07.1983. Now the appellant/plaintiff has based his claim on the basis of one registered Will dated 05.10.1999 allegedly executed by Birbal in favour of the plaintiff and others. Birbal could have referred to the

property in dispute in the Will only if he was left with any interest in the same.

11. The appellant/plaintiff has taken the stand that the written statement filed in Civil Suit No.409/09.06.1983 titled as "*Narsi Ram Vs. Birbal*" was not thumb marked by Birbal and some other person was produced in the Court for making statement which is Ex.P5 and it is further claimed that the Vakalatnama Ex.P6 does not bear the thumb impression of Birbal. It was argued that Birbal was educated person, therefore he used to affix his signatures and there was no reason for him to affix his thumb impression on the aforesaid documents which are Ex. P4 to P6. In order to substantiate his arguments, the learned counsel for the appellant/plaintiff had examined Shamsher Singh Malik, Handwriting and Finger Print Expert as PW4 who had compared the disputed thumb impression Q1 to Q4 with specimen thumb impression on the Will dated 05.10.1999. As per his report Ex.PW 4/B along with photographic chart Ex.PW 4/C1 to PW 4/C6, he came to the conclusion that questioned thumb impression did not match with the specimen thumb impression. The learned District Judge, Fatehabad while appreciating the statement of Shamsher Singh Malik PW4 pointed out that in the aforesaid report Ex.PW4/B there is only reference of different pattern without discussing the comparison of ridge characteristics. The learned District Judge, Fatehabad further referred that there can also be some difference due to pressure on the thumb while giving thumb impression along with the ink and ultimately the report given by the Handwriting and Finger Print Expert Ex.PW 4/B was not relied upon. Another aspect of the present case is that the disputed thumb impression was required to be compared with the admitted thumb impression of Birbal. The appellant/plaintiff has relied

upon Will No.127 dated 05.10.1999 Mark-D treating the same as admitted thumb impression. So far as the respondents/defendants No.1 to 6 are concerned, for them the thumb impression on the Will Mark-D cannot be treated as specimen thumb impression. It has come in the cross examination of Shamsheer Singh Malik, Handwriting and Finger Print Expert PW4 that while taking photographs of specimen thumb impression on the said Will no notice was given to the opposite party nor their counsel was informed. He claimed that for the inspection of record he had taken permission of Sub Registrar Fatehabad but he did not make any marking on the record of Sub Registrar on the said specimen thumb impression of Birbal. On the one hand, it is also the case of appellant/plaintiff that Birbal was educated person and he never used to affix his thumb impression but on the other hand at the time of registration of said Will No.127 dated 05.10.1999 alleged thumb impressions of Birbal were obtained.

Therefore, considering the aforesaid facts and circumstances of the case, in my opinion, the learned District Judge rightly discarded the opinion of Shamsheer Singh Malik PW 4, Handwriting and Finger Print Expert. It is further rightly concluded that suit filed by the present appellant/plaintiff seeking declaration and permanent injunction challenging the judgment and decree dated 23.07.1983 in Civil Suit No.409 of 1983 titled as "*Narsi Ram Vs. Birbal*" decided on 23.07.1983 is hopelessly barred by limitation.

In view of these facts and circumstances of the case, the verdict given by the learned District Judge, Fatehabad while passing impugned judgment and decree dated 04.02.2014 does not require any interference vide which the judgment and decree dated 09.12.2011 passed by Additional Civil Judge (Senior Division), Fatehabad was set aside.

Therefore, the judgment and decree dated 04.02.2014 is accordingly upheld and the appeal preferred by the appellant/plaintiff is accordingly dismissed.

The records received from the two Courts below be sent back to the concerned quarter.

Pending application(s) if any, also stands disposed of.

03.10.2023
Sunil Devi

(AMARJOT BHATTI)
JUDGE

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