

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

119

RSA-694-2024 (O&M)

Date of decision:13.03.2024

Yashpal Yadav

... Appellant

Vs.

Virender Singh & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Kartar Singh, Advocate for the appellant.

...

SUKHVINDER KAUR, J.

1. Instant regular second appeal has been filed by the appellant/defendant No.1 against the concurrent finding recorded by both the Courts below vide which suit of the plaintiff was decreed.

2. Brief facts of the case as per plaint are that plaintiff filed a suit for declaration and permanent injunction with consequential relief for possession alleging that Vikramaditya was owner in possession of the agricultural land as mentioned in para No.1 of the plaint which was inherited by him from his father and who in turn had inherited it from his father. The suit property was coparcenary in hands of Sh. Vikramaditya, who was the *karta* of the coparcenary family. Plaintiff being coparcener has a birth right in the suit property and after death of Vikramaditya, plaintiff is owner in possession over the suit property as per his share. It has been alleged that Vikramaditya suffered a collusive decree secretly in favour of defendant No.1 dated 01.06.2000 in a suit titled as "Yashpal Vs. Vikramaditya" bearing Civil Suit No.389 dated 23.10.1999 passed by Additional Civil

Judge (Senior Division), Rewari. It was alleged that said decree is liable to be set aside because late Vikramditya being *karta* of the family had limited rights and was not competent to transfer the suit property in favour of defendant No.1. Such judgment and decree has been passed on false and fabricated facts. Mutation No.12109 dated 30.10.2014 which had been sanctioned after 12 years is not binding upon the plaintiff. Such judgment and decree was not registered under Section 17 of the Registration Act and has no effect in the eyes of law. Since defendant wanted to interfere in the peaceful possession and ownership of the plaintiff, so the present suit was filed.

3. Vide judgment and decree dated 19.07.2017 passed by the Court of Additional Civil Judge (Sr. Division), Kosli, suit of the plaintiff was decreed. The appeal was preferred by defendant No.1 before the First Appellate Court of the Additional District Judge, Rewari and the same was dismissed vide judgment and decree dated 02.09.2023. Hence, defendant No.1/appellant has knocked the doors of this Court by way of filing the present Regular Second Appeal.

4. I have heard learned counsel for the appellant and gone through the record thoroughly.

5. Learned counsel for the appellant has contended that both the Courts below have failed to take into consideration the material fact that respondent No.1/plaintiff has not proved that the property in question is ancestral property. In the present case, there are four co-sharers of the property i.e. appellant, respondent No.1, father and sister. In this case, father has given his share to the appellant and his sister and other co-sharers have

not challenged the said decree. So, the appellant is entitled to retain possession and ownership of $\frac{3}{4}$ share of the suit property. Even if the case of the plaintiff/respondent is admitted, then also respondent No.1 is entitled to $\frac{1}{4}$ share of the suit property. He has argued that the appellant/defendant No.1 had got the suit property pursuant to the oral settlement which was agreed by the other co-sharers, sister and respondent No.1/plaintiff. Father of respondent No.1 was being looked after by the appellant/defendant No.1, so the appellant is in possession of the property in pursuance to the oral settlement and the other co-sharers have approved the said family settlement. He has submitted that the judgments and decrees were notice to the whole world. So the limitation shall start from the date of judgment and decree and not from the sanction of the mutation. So both the Courts below have wrongly held that the suit is within the period of limitation.

6. Copy of plaint Ex.P1, of civil suit, by which the appellant/defendant No.1 had obtained the judgment and decree in his favour in the previous suit titled as 'Yashpal Vs. Virender' has been placed on record. In the said plaint, the appellant/defendant himself had mentioned the suit property as ancestral coparcenary property whose owner in possession was Vikramaditya being the *karta* of the family and the appellant/defendant had claimed to be having a birth right in the suit property.

7. The written statement Ex.P2 which was filed in that case by late Sh. Vikramaditya has also been placed on record, wherein he had accepted nature of the suit property to be the hindu joint family coparcenary property and also accepted pre-existing rights of the then plaintiff who is presently defendant No.1 – Yashpal. So once the present defendant himself had

asserted the nature of the property to be ancestral coparcenary property and claimed having birth right in it, now he is estopped by his own conduct to plead otherwise. In the said plaint Ex.P1 in para No.2, a pedigree table has been given wherein, the present defendant No.1 had shown himself to be the only son and legal heir of late Vikramaditya. But while appearing as DW2, he has admitted during his cross-examination that he had one real brother and one real sister. So it stands proved that the decree Ex.P3 placed on record was obtained by the defendant by way of mis-representation and fraud upon the Court.

8. As per mutation Ex.P8, the suit property was inherited by grandfather of the plaintiff and defendant No.1, namely, Chhaju from his father – Ranjeet and thereafter that property was inherited by Vikramaditya. So the Courts below have rightly held that the disputed property is ancestral in nature and respondent/plaintiff, proforma respondent and appellant/defendant have birth rights in the same and Vikramaditya had no right to transfer the disputed property only in favour of the appellant/defendant. So the judgment and decree dated 01.06.2000 is not binding upon the rights of the plaintiff/respondent. A fraudulent decree cannot take away any rights from the plaintiff and a person who is not coming to the Court with clean hands is not entitled to the relief claimed by such person.

9. Even if Vikramaditya was being looked after by defendant No.1 and he was residing with him, even then the pre-existing right of the respondent/plaintiff in the suit property could not be taken away, by concealing the true facts from the Court while obtaining the judgment and

decree dated 01.06.2000.

10. The Courts below have also rightly held that the limitation period to challenge the aforesaid judgment and decree will start running from the date when such judgment and decree came in the knowledge of the respondent/plaintiff. Name of respondent/plaintiff was reflected in the revenue record in the year 2014 when the mutation No.12109 dated 30.10.2014 was sanctioned in his favour and it is the specific plea of respondent/plaintiff that he came to know about the said judgment and decree when the mutation was sanctioned in favour of appellant/defendant No.1 and then the present suit has been filed within the limitation from the date of the said knowledge.

11. No question of law much less substantial question of law arises for determination in the present second appeal. The appeal is without any merits and is hereby dismissed.

12. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

13.03.2024

harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |