

2024:PHHC:106862



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-784-1997 (O&M)
Reserved on : 14.08.2024
Pronounced on : 21.08.2024

AJAIB SINGH (SINCE DECEASED) THR LRSAppellants

VERSUS

BHUPINDER SINGH AND OTHERSRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Sukhanpreet Kaur Rang, Advocate for
Mr. S.S. Rang, Advocate for the appellants.

Mr. Karanpreet Singh, Advocate for
Mr. T.S. Chauhan, Advocate for respondents No.1, 2 and 5.

None for respondent No.4.

Service of respondents No.6 to 10 dispensed with
vide order dated 11.07.2024.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by defendant No.1-appellant challenging the judgment and decree dated 04.06.1993 passed by the Trial Court and the judgment and decree dated 12.12.1996 passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-Ajmer Singh had filed the present suit for declaration and permanent injunction averring therein that he and defendants No.5 and 6 i.e. Bachan Singh and Ujjagar Singh were brothers and defendants No.2 to 4 i.e. Bhan Kaur, Surjit Kaur and Nand Kaur, respectively were their sisters and defendant No.1 i.e.

the appellant herein is the son of defendant No.5. It was the case set up that the land in dispute was owned by Bholu who had three daughters and three sons. On the death of Bholu, land measuring 90 Kanals and 7 Marlas was inherited by his children. Sometime before the filing of the suit, a dispute arose between the plaintiff and the defendants qua the Khewat. The dispute was settled with the intervention of the villagers and it was resolved that defendants No.2 to 4 i.e. respondents No.6, 7 and 8 respectively herein shall surrender their shares in the suit land in favour of each of their brothers, namely, the plaintiff-Ajmer Singh and defendant-respondent Nos.9 and 10 in the present appeal or their sons as may be opted by them. Defendant No.2 i.e. Bhan Kaur (respondent No.6 herein) suffered a decree qua her 9/88th share in the total Khewat in favour of defendant-respondent No.10 herein and mutation was also sanctioned on the basis of the decree. Defendant No.1-appellant filed a Civil Suit being CS-844 of 26.11.1990 against his Aunt defendant-respondent No.8 herein for declaration to the effect that he was the owner in possession 1/2 share of the land comprised in Khasra Nos.22//17 (8-0), 18 (8-0) bearing Khewat No.308 and Khatauni No.581 and Khasra No.22/23/1 min (1-5) and 24/1 min (1-4) bearing Khatauni No 582. He also filed another suit being CS-729 of 06.12.1990 against his other Aunt defendant-respondent No.7 herein regarding the remaining 1/2 share in these Khasra numbers. In both the said suits, defendant-respondents No.7 and 8 were made to believe that they were surrendering 29/88th share each in the land in dispute by means of the Civil Court decree though that was not true. They were brought to the Court on different dates but were not allowed to

meet each other. Both the suits were decreed vide judgements and decrees dated 14.01.1991 and 04.03.1991. Sometime prior to the filing of the present suit the plaintiff-Ajmer Singh is alleged to have approached his sister defendant-respondent No.7 i.e. Surjit Kaur to surrender her share in the suit land in his favour in accordance with the family settlement. She stated that she had already suffered a civil court decree dated 14.01.1991 in favour of defendant No.1-appellant herein at the asking of the other brother defendant-respondent No.9. On this the plaintiff-Ajmer Singh approached his other sister defendant-respondent No.8 i.e. Nand Kaur to get her share transferred in his favour but to his utter surprise he was told that she had also already suffered a civil court decree dated 04.03.1991 in favour of defendant No.1-appellant. Thereafter, he informed his sisters Surjit Kaur and Nand Kaur that the decrees suffered by them were not in accordance with the family settlement as one of them was to surrender her share in his favour and the other in favour of Bachan Singh (defendant-respondent No.9 i.e. father of the defendant No.1-appellant). It was only thereafter that the two sisters - Surjit Kaur and Nand Kaur - came to know of the fraud played upon them. The said decrees dated 14.01.1991 and 04.03.1991 were challenged on various grounds of fraud and misrepresentation, a declaration qua ownership of the plaintiff-Ajmer Singh was sought and relief of permanent injunction was prayed for.

3. The suit was contested by defendant No.1-appellant herein whereas defendant-respondents No.6 to 8 admitted the pleadings of the plaintiff-Ajmer Singh and prayed that the suit be decreed. The remaining

defendants did not appear. Defendant No.1-appellant herein in his written statement admitted the relationship, however, pleaded that he is in possession of the suit property covered by the impugned decrees for the last more than 12 years and his possession was peaceful, exclusive, unbroken, open and hostile and to the knowledge of the plaintiff-Ajmer Singh. He claimed that he became owner of the suit property by way of the impugned decrees passed in his favour. He further claimed that his Aunts - Surjit Kaur (defendant-respondent No.7) and Nand Kaur (defendant-respondent No.8) - were fully aware of the facts of the suit filed by him and they admitted his claim. It was further the stand that the plaintiff-Ajmer Singh had played a fraud upon the defendants and got their statement recorded in the suit by misrepresentation.

4. Replication was filed denying the averments made in the written statement filed by the defendant No.1-appellant herein and reiterating those of the plaint. Statements of Surjit Kaur (defendant-respondent No.7), Nand Kaur (defendant-respondent No.8) and Ujjagar Singh (defendant-respondent No.10) were recorded who admitted the claim of the plaintiff-Ajmer Singh.

5. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the decrees and judgments dated 04.03.1991 and 14.01.1991 are liable to be set aside on the grounds mentioned in the plaint and are not binding upon the plaintiff? OPP

2. Whether the plaintiff is entitled to the injunction as prayed for ? OPP
3. Whether the suit is not maintainable ? OPD
4. Whether the plaintiff has no cause of action to file the present suit ? OPD
5. Whether the plaintiff is estopped by his act and conduct from filing the present suit ? OPD
6. Relief.

6. The Trial Court vide judgement and decree dated 04.06.1993 partly decreed the suit declaring the judgements and decrees dated 04.03.1991 and 14.01.1991 as being void and not binding upon the rights of the plaintiff-Ajmer Singh. The suit regarding the remaining relief was dismissed. Aggrieved by the same, defendant No.1-appellant preferred an appeal which appeal was dismissed by the First Appellate Court vide judgment and decree dated 12.12.1996. Hence the present regular second appeal by the defendant No.1-appellant.

7. The learned counsel appearing on behalf of the defendant No.1-appellant would contend that the family settlement was oral and there was no written proof regarding the family settlement. It is further the contention that the suits had been decreed in favour of defendant No.1-appellant and there was no justifiable reason to set aside the decrees in his favour. Reference was also made to the two affidavits executed by Surjit Kaur (defendant-respondent No.7) and Nand Kaur (defendant-respondent No.8)

wherein they stated that they have no objection regarding the decrees passed in favour of the defendant No.1-appellant.

8. *Per contra*, learned counsel for the respondents No.1, 2 and 5 has contended that the defendant No.1-appellant had claimed to be in adverse possession in the previous suits in which Surjit Kaur (defendant-respondent No.7) and Nand Kaur (defendant-respondent No.8) are stated to have filed an admitted written statement. Learned counsel would further contend that infact defendant No.1-appellant was never in possession of the suit property. It is further the contention that even Surjit Kaur (defendant-respondent No.7) and Nand Kaur (defendant-respondent No.8) were not in possession of any specific khasra number and they could not have suffered a decree in favour of the defendant No.1-appellant.

9. I have heard the learned counsel for the parties and with their assistance have gone through the record.

10. In the present case the plaintiff-Ajmer Singh had set up an oral family settlement which was held to have been proved by both the Trial Court as well as the First Appellate Court. The First Appellate Court held the family settlement to be proved not only from the evidence led by the plaintiff-Ajmer Singh but also from the cross-examination of DW-3, namely, Joginder Singh. DW-3 in his cross-examination admitted that the family settlement was arrived at in the same terms as pleaded by the plaintiff-Ajmer Singh. He also admitted that in accordance with the family settlement, defendant No.2 i.e. Bhan Kaur had transferred her share. The factum of the family settlement was also not denied by the defendant No.1-appellant in his

cross-examination. He further admitted that one of the sisters i.e. defendant No.2 - Bhan Kaur - had suffered a decree in respect to her share in favour of her brother Ujjagar Singh (defendant-respondent No.10). Further still it has been held by both the Courts concurrently that the defendant No.1-appellant was never in possession of the khasra numbers covered in the two consent decrees and hence his claim qua having become owner by adverse possession was not established. Learned counsel for the defendant No.1-appellant has not been able to convince this Court that the family settlement was not proved in accordance with law. The learned counsel for the defendant No.1-appellant has not addressed any argument regarding the decrees dated 14.01.1991 and 04.03.1991 being in violation of the provisions of the Registration Act, 1908 and the Transfer of Property Act, 1882. Both the decrees created rights for the first time in favour of the defendant No.1-appellant in immovable property valued at more than ₹100. Since both the decrees were not registered, hence, the same could not be held to have transferred any right in favour of the defendant No.1-appellant.

11. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

21.08.2024

Aman Jain

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No