

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4028 of 2006 (O&M)

Date of Order:15.02.2024

Kulwant Singh and others

.Appellants

Versus

Jarnail Singh (Deceased) through LR's and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S.Dhaliwal, Advocate
for the appellants.Mr. Manish Kumar Singla, Advocate
Mrs. Shikha Singla, Advocate
Mr. Dinesh Kumar, Advocate
for LR's of respondent no.1
for respondent nos.2 to 4 and 16Mr. Vivek Singla, Advocate
for respondent nos.17, 18, 19(i) and (ii)ANIL KSHETARPAL, JC.M.No.7148-C-2019

1. For the reasons mentioned in the application which is supported by an affidavit, the application is allowed and the delay of 595 days in filing the application for restoration of the appeal is condoned.

C.M.No.7151-C-2019

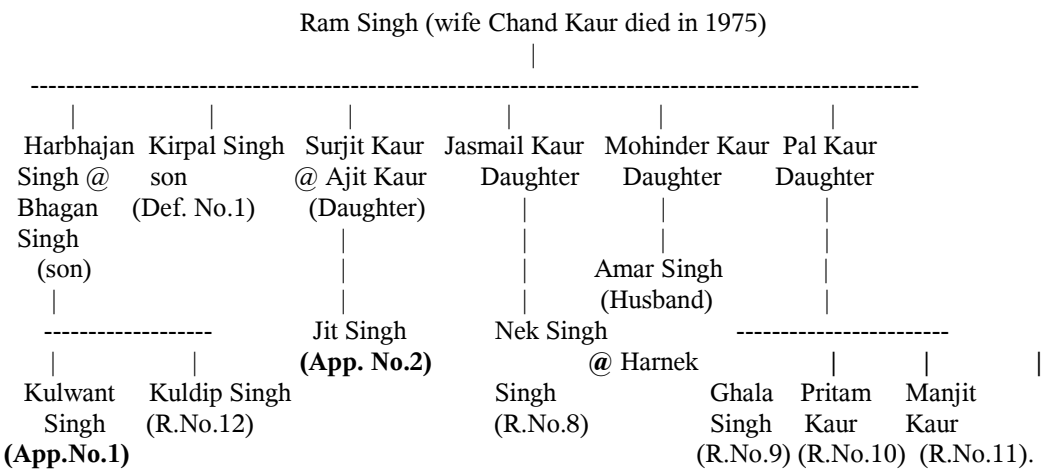
2. For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed and the appeal is restored to its original number. Taken on Board for final disposal.

MAIN

3. In this regular second appeal, the plaintiffs assail the correctness of the concurrent findings of fact arrived at by the courts below while

dismissing the plaintiffs' suit for grant of decree of declaration to the effect that the plaintiffs and defendants no.2 to 10 are owners of the suit property described in schedule 'A' in the caption of the plaint and to the extent of 13/16th share of the suit property described in schedule 'B'. In substance, the plaintiffs are challenging the correctness of two previous judgments and decrees passed by the courts on 29.07.1991, in Civil Suit No.66 of 04.02.1991 and on 05.06.1996 in Civil Suit No.694 of 22.07.1995.

4. In order to understand the inter-se relationship between the parties, a family tree as produced by the appellant in the grounds of appeal, is extracted as under:-



5. On 29.07.1991, Smt. Mohinder Kaur, Sh. Surjit Singh alias Jit Singh and Sh. Harnek Singh suffered a consent decree acknowledging that Sh. Kirpal Singh to be exclusive owner by virtue of the family settlement. Subsequently, in Civil Suit No.694 of 22.07.1995 (Kirpal Singh vs. Smt. Mohinder Kaur and others), Sh. Kirpal Singh was declared owner while acknowledging distribution of the property by a family settlement vide judgment and decree passed on 05.06.1996. The correctness of the aforesaid decrees was challenged on 18.04.1998, by Sh. Kulwant Singh and Sh. Surjit Singh alias Jit Singh.

6. It was claimed that both the decrees are result of impersonation

and fraud. It was also claimed that Smt. Pal Kaur, one of the defendant in Civil Suit No.694 had already died and therefore, the decree against her rights is nullity.

7. Both the courts on appreciation of the evidence have come to a conclusion that the plaintiffs have failed to prove their case. In fact, Sh. Kulwant Singh was not party to any of the two decrees previously passed. Sh. Jit Singh was defendant in Civil Suit No.66. It has come on record that the defendants in both the suits filed written statements admitting the claim of the plaintiffs. Subsequently, their testimonies were recorded by the court. Their presence in the court and the testimonies were identified by their respective counsel. Thus, both the courts have come to a conclusion that both the decrees passed by the courts below have voluntarily suffered by the defendants in the aforesaid suits and hence there is no ground to set aside the same. In this case, even the learned counsel representing the defendants in the previous suits has been examined who have stated that on the instructions of the defendants in those suits, the written statements admitting the claim of the plaintiffs were filed.

8. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

9. Dismissed.

10. All the pending miscellaneous applications, if any, are also disposed of.

February 15, 2024

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(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned

Whether reportable

:YES/NO

:YES/NO