

RSA No.3653 of 2018

2024:PHHC:042516

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

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RSA No.3653 of 2018 (O&M)

Reserved on : 20.03.2024

Pronounced on: 01.04.2024

Dharam Singh (deceased) through his LR

....Appellant

VERSUS

Ram Sarup & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.K. Saini, Advocate for the appellant.

ALKA SARIN, J.

CM-9488-2018 and CM-9489-2018

CM-9488-2018 is an application for condonation of delay of 84 days in refiling the appeal.

For the reasons stated in the application, delay of 84 days in refiling the appeal is condoned. CM stands disposed off.

CM-9489-2018 is an application for condonation of delay of 119 days in filing the appeal.

For the reasons stated in the application, delay of 119 days in filing the appeal is condoned. CM stands disposed off.

RSA-3653-2018

1. The present regular second appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 14.01.2014 passed by the Trial Court and the judgment and decree dated 22.02.2017 passed by the First Appellate Court whereby his suit for declaration and joint possession has been dismissed.

2. The brief facts relevant to the present case are that the plaintiff-appellant and the defendant-respondent Nos.1 and 2 are the sons of Kundan Singh. The present suit was filed to challenge the judgement and decree dated 07.11.1990 passed in Civil Suit No.1105 of 1990 and the subsequent mutation nos.1336 of 1990 and 1002 of 1991 as also order dated 03.03.2003 passed in Civil Suit No.145 of 2001. As per the plaintiff-appellant, Jaila the father of defendant-respondent Nos.3 to 16 was the owner in possession of land measuring 1 kanal 2 marla to the extent of 22/1370 shares. Jaila died in the year 1997 and after his death defendant Nos.3 to 16 inherited his estate. It was further pleaded that defendant-respondent Nos.2 and 3 in collusion with one person had filed Civil Suit No.1105 of 1990 titled as Kashmir Singh Vs Jaila and obtained a fraudulent, null and void and collusive judgement and decree dated 07.11.1990 from the Court. The said decree was liable to be declared null and void as Jaila had never suffered any decree in favour of the plaintiff-appellant and his brothers defendant-respondent Nos.1 and 2. The said decree had been procured by defendant-respondent Nos.1 and 2 in collusion with defendant-respondent No.3 by producing him as Jaila in the Court and that no summon was issued to Jaila. Jaila had never engaged any counsel nor made any statement in the Court, he had neither filed any written statement nor power of attorney in the Court and that no compromise had taken place in the Court. It was alleged that on the basis of the judgement and decree dated 07.11.1990 the defendant-respondent No.1 had got mutation no.1336 entered and later on a mutual partition was effected vide mutation no.1002 in the year 1992. However, the plaintiff-

appellant and defendant-respondent Nos.1 and 2 were not the owners of the land mentioned in mutation no.1002. It was further alleged that Fatta son of Jaila had also filed Civil Suit No.145 of 2001 for committing fraud upon the Court by the legal representatives of said Jaila but this matter was also compromised. Hence, the suit was filed. The defendant-respondent Nos.1 and 2 filed written statement raising preliminary objections regarding maintainability, cause of action, locus standi, time bar, res judicata, estoppel etc. It was further submitted that the plaintiff-appellant had already filed a civil suit i.e. Civil Suit No.825 of 1992 decided on 24.04.1999 for declaration and permanent injunction regarding the land which included the suit land which was also part of mutation no.1002. In the said civil suit the issue no.2 was decided against the plaintiff-appellant and his appeal was also dismissed on 07.01.2005 and RSA No.1867 of 2005 was also dismissed on 14.01.2006. It was further submitted that Fatta son of Jaila had also filed a suit for joint possession of part of land which include the suit land and had challenged the judgement and decree dated 07.11.1990 and that the said suit was compromised and compromise decree was passed in which the judgement and decree passed in Civil Suit No.1105 of 1990 were upheld.

3. On the basis of the pleadings of the parties the Trial Court framed the following issues :

1. Whether the decree dated 7.11.1990 passed in civil suit no.1105/90 and order dated 3.3.2003 passed in civil suit no.145 of 2001 and mutation no.1336 of 1990 and 1002 of 1991 are illegal, null and void ? OPP

2. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
3. Whether the plaintiff has no cause of action ? OPD
4. Whether the plaintiff has no locus standi to file the present suit ? OPD
5. Whether suit is barred by principle by resjudicata ? OPD
6. Whether suit of plaintiff is time barred ? OPD
7. Whether plaintiff is estopped to file present suit by his own act and conduct? OPD
8. Relief.

4. The Trial Court vide judgment and decree dated 14.01.2014 dismissed the suit of the plaintiff-appellant. Aggrieved by the said judgment and decree dated 14.01.2014 an appeal was preferred by the plaintiff-appellant which appeal was also dismissed vide judgment and decree dated 22.02.2017. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant has contended that the impugned judgements and decrees are illegal and erroneous and that the Courts have wrongly dismissed the suit of the plaintiff-appellant. It was submitted that the initial judgement and decree dated 07.11.1990 passed in Civil Suit No.1105 of 1990 had been obtained by fraud and thus any subsequent mutations entered on the basis of the said judgement and decree were also vitiated and cannot be sustained. It was further contended that the judgement and decree dated 07.11.1990 being a result of fraud, the plaintiff-

appellant was not bound by the same. According to counsel the suit of the plaintiff-appellant should have been decreed.

6. Heard counsel for the plaintiff-appellant and perused the paperbook.

7. Both the Courts have reached concurrent findings of fact and have dismissed the suit of the plaintiff-appellant. It has been found that in Civil Suit No.1105 of 1990 the present plaintiff-appellant alongwith his brothers i.e. the present defendant-respondent Nos.1 and 2 were the plaintiffs and the same was compromised with the defendant of that suit i.e. Jaila. The present plaintiff-appellant was a signatory to the compromise dated 25.10.1990 arrived at in Civil Suit No.1105 of 1990 and was a beneficiary of the judgement and decree passed therein. There is no explanation forthcoming as to why the plaintiff-appellant did not bring the alleged impersonation of Jaila to the notice of the Court in the proceedings in Civil Suit No.1105 of 1990. Further, the same judgement and decree dated 07.11.1990 passed in Civil Suit No.1105 of 1990 was challenged in a suit filed by the son of Jaila i.e. Civil Suit No.145 of 2001. The present plaintiff-appellant and his brothers the present defendant-respondents were a party in that suit. The said Civil Suit No.145 of 2001 was compromised and order dated 03.03.2003 was passed therein. Again there is no explanation as to why the plaintiff-appellant did not deem it appropriate to make a statement before the Court in Civil Suit No.145 of 2001 that the judgement and decree dated 07.11.1990 passed in Civil Suit No.1105 of 1990 had been obtained by fraud. It may be noticed here that criminal proceedings launched by the son

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of the plaintiff-appellant also ended in failure. Counsel for the plaintiff-appellant has not been able to show anything on the record to displace the earlier judgement and decree dated 07.11.1990 passed in Civil Suit No.1105 of 1990 and the order dated 03.03.2003 passed in Civil Suit No.145 of 2001. No other point was argued.

8. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

01.04.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO