

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

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RSA No.2183 of 2022 (O&M)**Reserved on : 08.05.2025****Date of Decision: 20.05.2025**

Gajja @ Gaje Singh (since deceased) through LR

....Appellant

VERSUS

Rajinder Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Surender Dhull, Advocate for the appellant.

ALKA SARIN, J.**CM-7494-C-2022**

1. For the reasons mentioned therein, the present application is allowed and the delay of 95 days in refiling the present appeal is condoned. The application stands disposed off.

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2. This is an application for bringing on record the legal heir of Gajje, the original plaintiff, who died on 30.01.2020 i.e. after the decision by the First Appellate Court. For the reasons mentioned therein, the present application is allowed and the legal heir of Gajje is brought on record only for the purposes of pursuing the present appeal. The application stands disposed off.

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3. This regular second appeal is by the plaintiff-appellant challenging the judgements and decrees dated 25.05.2016 and 29.01.2020 of

the Trial Court and the First Appellate Court, respectively, whereby the suit for declaration and joint possession has been dismissed.

4. As per the plaintiff-appellant he is the owner of 1/2 share i.e. 8 Kanals 15 Marlas out of total agricultural land measuring 17 Kanals 10 Marlas and is in cultivating possession of the same. As the plaintiff-appellant wanted to take a loan from the bank against this land, he visited the Patwari for obtaining a copy of the jamabandi when he came to know that no land was standing in his name. The Patwari revealed that his 2 Kanals 6 Marlas land is recorded in the name of the defendant-respondent on the basis of an alleged decree passed by the civil court on 20.07.1984. On obtaining copies of the documents the plaintiff-appellant learnt that a fraud had been played upon him as he never suffered any decree in favour of the defendant-respondent. Rather, for getting the land partitioned the father of the defendant-respondent had brought the plaintiff-appellant to an advocate where his thumb impressions were obtained and then he was taken to an officer where his thumb impressions were also got affixed. The averments made in the plaint of that suit were absolutely against facts and law. According to the plaintiff-appellant the alleged consent decree dated 20.07.1984 is a fraudulent decree because the suit was filed on 20.07.1984, written statement was filed on 20.07.1984, statements were recorded on 20.07.1984 and the decree was also passed on 20.07.1984. Hence, the suit. In his written statement the defendant-respondent raised preliminary objections regarding maintainability, locus standi, jurisdiction. etc. It was submitted that the parties were closely related having common forefathers and that even the mother of the plaintiff-appellant and grandmother of the defendant-respondent were real sisters. It was the stand taken that the plaintiff-appellant used to receive financial services from the father as well

as grandfather of the defendant-respondent and in 1984, out of love and affection towards the defendant-respondent, the plaintiff-appellant relinquished his rights in the suit land in favour of the defendant-respondent being his nephew and also handed over possession of the same. This was also affirmed by way of suffering a civil court decree dated 20.07.1984 in Civil Suit No.544 of 1984 titled 'Rajinder Singh Vs. Gajja' and thereafter even the mutation bearing no.1455 in pursuance of decree dated 20.07.1984 was entered and sanctioned in favour of defendant-respondent. It was averred that the suit had been filed only to harass the defendant-respondent and his family members. In the replication the contents of the written statement were denied and those of the plaint were reiterated.

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

1. Whether decree dated 20.07.1984 is illegal, null and void on the ground mentioned in the plaint ? OPP
2. Whether plaintiff is entitled for declaration as prayed ? OPP
3. Whether plaintiff is entitled for joint possession as prayed ? OPP
4. Whether plaintiff is also entitled for permanent injunction as prayed ? OPP
5. Whether plaintiff has concealed true and material facts from the court ? OPD
6. Whether plaintiff has no locus standi to file the present suit ? OPD
7. Whether present suit is barred by limitation ? OPD
8. Relief.

6. Vide judgement and decree dated 25.05.2016 the Trial Court dismissed the suit of the plaintiff-appellant holding inter-alia that he had failed to prove that the decree dated 20.07.1984 is a result of fraud. Aggrieved by the decision of the Trial Court the plaintiff-appellant preferred an appeal which appeal was also dismissed by the First Appellate Court vide judgement and decree dated 29.01.2020. Hence, the present regular second appeal by the plaintiff-appellant.

7. Learned counsel for the plaintiff-appellant has contended that the impugned judgements and decrees of the Trial Court and the First Appellate Court are illegal and erroneous and based upon conjectures and surmises. It is argued that the decree dated 20.07.1984 was illegal being based on fraud. Learned counsel contended that the suit was filed on 20.07.1984, the written statement was filed on 20.07.1984, the statements were recorded on 20.07.1984 and the decree was also passed on 20.07.1984 which itself was sufficient to prove that a fraud had been played upon the plaintiff-appellant. It is urged that since the decree dated 20.07.1984 was based on fraud, it could be challenged at anytime.

8. Heard learned counsel for the plaintiff-appellant and perused the paper-book.

9. Both the Courts have returned concurrent findings of fact that the plaintiff-appellant had failed to prove any fraud being played while passing of decree dated 20.07.1984. It has been found that on 20.07.1984 the plaintiff-appellant came to the Court complex, engaged an Advocate and filed his admitted written statement. He appeared in the Court and got his statement recorded admitting the claim of the defendant-respondent. The plaintiff-appellant was also identified by his Advocate on 20.07.1984. In his plaint the plaintiff-appellant did not mention that his statement had been

recorded on 20.07.1984. Mere bald allegations of fraud without sufficient proof and intent to deceive would not render a decree obtained by a party as fraudulent. Fraud has to be proved and not merely alleged and inferred. However, the evidence on the record in the present case does not establish the commission of any fraud by the defendant-respondent. Merely because all the events took place on the same day would not prove that a fraud had been played on the plaintiff-appellant. The plaintiff-appellant did not produce any cogent and reliable evidence to substantiate the stand taken by him. The Court has to take a general view keeping in mind the facts and circumstances of the case with particular reference to the intent of the parties, their action in furtherance thereto and the object sought to be achieved by them. There is no material available on the record to make out a case for decreeing the suit of the plaintiff-appellant. No other point has been argued.

10. In view of the above, the concurrent findings of fact returned by both the Courts do not warrant any interference by this Court. There is no ground to interfere in the present regular second appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.05.2025

jk

(ALKA SARIN)
JUDGE

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