

(2015) 09 P&H CK 0332

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3939 of 2013 and R.S.A. No. 3679 of 2012 (OandM)

Machhi Ram Kishan Singh Sidana Rice Mills

APPELLANT

Vs

Sham Singh and Others

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4, 101

Citation : (2015) 180 PLR 582

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : P.N. Aggarwal and Nitin Kaushal, for the Appellant; Raman Goklaney, for the Respondent

Final Decision : Allowed

Judgement

Amit Rawal, J.—By this order, I intend to dispose of two Regular Second Appeals bearing Nos. 3939 of 2013 and 3679 of 2012 as the common questions of law and facts involved both the appeals are the same. Regular Second Appeal No. 3679 of 2012 has been filed by appellant-contesting defendant Nos. 2 and 3 and Regular Second Appeal No. 3939 of 2013 has been filed by M/s. Machhi Ram Kishan Singh Sidana, Rice Mills, who are stated to have purchased the property measuring 12 kanals 11 marlas vide two separate sale deeds dated 31.1.2005 and 25.1.2008 for a valuable consideration from the defendants. They have challenged the judgment and decree dated 5.5.2012 of the Lower Appellate Court, whereby the judgment and decree dated 7.11.2009 passed by the Additional Civil Judge (Senior Division), Jalalabad, the suit filed by the respondent-plaintiffs for declaration that plaintiff and defendant Nos. 4 to 8 are owners in joint possession of land measuring 17 kanals, i.e., 2/7 share of total land measuring 59 kanals 9 marlas as described in the suit and the judgment and decree dated 16.10.1993 passed in Civil Suit No. 690-1 dated 13.9.1993 titled as Sana Singh etc. v. Shahra Singh etc. and as well as mutation bearing

No. 14278 sanctioned pursuant to the aforementioned judgment being result of fraud, coercion and misrepresentation, has been dismissed.

2. Mr. L.S. Sidhu, learned counsel appearing on behalf of the appellant-defendant Nos. 2 and 3 in RSA No. 3679 of 2012 and Mr. P.N. Aggarwal Advocate assisted by Mr. Nitin Kaushal, Advocate appearing on behalf of the appellant in RSA No. 3939 of 2013, i.e., subsequent vendees, submit that the impugned judgment and decree of the Lower Appellate Court suffers from illegality and perversity as the suit filed in the year 2003, i.e., on 1.10.2003 challenging the judgment and decree dated 13.10.1993 was ex-facie time barred as the story for acquiring the cause of action in the month of August, 2003, i.e., by obtaining the copy of the jamabandi, the plaintiffs sons of Bagha Singh came to know about the decree and, therefore, the suit, aforementioned, was filed is coined. The trial Court rightly dismissed the suit on the premise that the plaintiffs failed to establish their case to the satisfaction of the Court, inasmuch, as that the fraud, misrepresentation and coercion had not been proved. In essence, the allegations were not sufficient to prove that the judgment and decree and any other document conveying the title or right in immovable property in favour of transferee can be challenged by the person, who had suffered the said decree or executed the document as it is the said sufferer, who knows the circumstances in which the alleged fraud, coercion and undue influence has been practiced upon him by the transferee. They further submit that the trial Court, on the basis of the oral and documentary evidence, found that Shahra Singh had suffered two statements on 13.10.1997, one in his personal capacity and the second being the attorney of Bagha Singh. The Special Power of Attorney (Ex. D1) dated 19.1.1977 executed by Bagha Singh in favour of Shahra Singh had never been revoked during his life time nor after suffering the decree or till his death. They further submit that Bagha Singh, during his life time, did not challenge the decree. It is only after lapse of ten years, the suit has been filed.

3. The appellant in RSA No. 3939 of 2013 had purchased the property after the dismissal of the suit, which was dismissed on 7.11.2009 and, therefore, the doctrine of lis pendens would not apply. The plaintiffs have failed to discharge the burden as envisaged under Section 101 of the Civil Procedure Code, much less, no evidence of fraud or coercion, as per the provisions of Order 6 Rule 4 CPC, has been led/proved. They further submit that the plaintiffs have not taken any plea that the Power of Attorney was given only for the management of the property and therefore, it has wrongly been used by Shahra Singh, much less, Shahra Singh transgressed the powers given by Bagha Singh. The plaintiffs have failed to prove their joint possession over the suit property as no documentary evidence in this regard had been proved. Had they been in joint possession, they would have come to know about the judgment and decree as the defendants were in conscious physical possession of the property from the date of the decree passed in the year 1993. Even the mutation with regard to the decree has been effected in the year 2001 and the suit had been filed in the year 2003. 4. Mr. P.N. Aggarwal, learned counsel appearing on behalf of the subsequent vendee

submits that by virtue of the sale, the possession of the property had also been handed over and this fact was also reflected in the jamabandi for the year 2008-09, thus, prays that the following substantial questions of law arise for determination by this Court:--

"a) Whether, the plaintiffs have been able to prove the forgery and fraud as pleaded by them?

b) Whether the plaintiffs have been able to prove their possession over the suit land?

c) Whether the plaintiffs have not sought relief of possession against the defendants, whether their suit for decree of declaration is maintainable?

d) Whether, the Learned First Appellate Court has misread and misinterpreted the pleadings and evidence on record?

e) Whether the limitation for filing declaration suit declaring the judgment and decree as illegal null and void can be filed within three years from the date of judgment and decree as per Article 58 of Limitation Act?"

5. Mr. Raman Goklaney, Advocate appearing on behalf of respondent Nos. 1 to 7 in both the appeals submits that the plaintiffs acquired the knowledge of the judgment and decree dated 16.10.1993 vide Ex. P2 on 29.8.2003 and the suit was accordingly filed in October, 2003 without any further delay and, therefore, the suit is not hit by law of limitation. The Power of Attorney in favour of the counsel did not bear the signature of Bagha Singh, much less, though admittedly the written statement had been filed on behalf of both the defendants, i.e., Bagha Singh and Shahra Singh. The Lower Appellate Court has not committed any illegality and perversity in setting-aside the judgment and decree of the trial Court, whereby the suit at the instance of the plaintiffs had been dismissed. D.W. -1 Paramjit Singh to a specific question put in the cross-examination stated that he had not filed any suit against Bagha Singh and Shahra Singh in any Court and similarly Sona Singh and Teja Singh also did not file any suit against Shahra Singh. He further submits that there is no illegality and perversity in the judgment and decree of the Lower Appellate Court, much less, the appeals do not involve any substantial question of law.

6. I have heard the learned counsel for the parties and appraised the paper book.

7. The frame of the suit reveals that the respondent-plaintiffs sought declaration with regard to the correction in the revenue record and title deed, but also claimed themselves to be in joint possession of the land, whereas on the contrary, the revenue record reflects the ownership in favour of Sona Singh, Teja Singh and Paramjit Singh, the decree-holders in Civil Suit No. 690-1 dated 13.9.1993 and the defendants in the present suit and the mutation was effected on 18.1.2000. The plaintiffs were not in possession of the land even after the death of Bagha Singh. They failed to take any action for setting-aside the judgment dated 16.10.1993 for a period of ten years. Even otherwise, the suit

land purchased by the appellant in RSA No. 3939 of 2013 is measuring approximately 12 kanals 1 marla, whereas Bagha Singh and Shahra Singh owned 8 kanals 10 marlas out of total 17 kanals and, therefore, for all intents and purposes, in case the plaintiffs were aggrieved, they could have sought the relief of partition on the point that they were co-owners along with other owners, but no such relief has been sought. The written statement (Ex. P6) dated 7.10.1993 was filed on behalf of Bagha Singh son of Jhanda Singh in favour of plaintiffs Sona Singh, Teja Singh and Paramjit Singh sons of Shahra Singh. Shahra Singh suffered two statements on 13.10.1993, one in his personal capacity and other in the capacity of Bagha Singh on the basis of Special Power of Attorney dated 19.1.1977 (Ex. D1). The said Special Power of Attorney, during the life time of Bagha Singh, was never revoked.

8. In order to establish the coercion, misrepresentation and fraud, it is essential requirement of law that the pleadings have to be in accordance with Order 6 Rule 4 CPC, but the pleadings are not sufficient. The plaintiffs have to stand on their own legs to discharge the onus by leading direct, cogent and positive evidence. No cogent evidence vis-?-vis coercion, misrepresentation and fraud played upon Bagha Singh had been proved. For the reasons, the suit had been filed in the year 2003, whereas the decree had been suffered in October, 1993. Bagha Singh, during his life time, had not challenged that decree. He was the best person to challenge the same had actually the fraud in question, much less, representation played upon him. The vendee had not been able to prove that Bagha Singh, during his life time, revoked the power of attorney in favour of Bagha Singh. The evidence placed on record proves that the possession of the property measuring 17 kanals was in favour of the decree-holders, i.e., defendant Nos. 1 to 3 in the present suit and plaintiffs in Civil Suit No. 690-1 of 2001. Thus, for all intents and purposes, the plaintiffs had the knowledge of the decree as they were not having the possession and their mere silence for a period of ten years and invoking the jurisdiction of the court by filing the suit for declaration is nothing but an act of greed and armed twisting tactics. Such practice at the instance of such plaintiffs is liable to be nipped in the bud and rightly so, the trial Court, on the basis of the oral and documentary evidence dismissed the suit. Had Shahra Singh suffered one statement in his personal capacity and as well as the attorney of Bagha Singh, the things could have been different. He suffered two statements, one in his personal capacity and another as attorney of Bagha Singh. There cannot be said to be any fraud played upon Bagha Singh.

9. It is strange that what was the necessity for the plaintiffs to obtain the copy of jamabandi after a long period of ten years. No explanation has come as to what was the reason for obtaining the copy of the jamabandi on 29.8.2003 suddenly.

10. In my view, the suit is ex-facie barred by limitation, for, as per Article 58 of the Limitation Act, limitation is of only three years. The finding by the Lower Appellate Court that no fact could be elicited during the cross examination of the

plaintiffs that they had the knowledge, in my view, is not correct finding for the reason that document Ex. P1 itself, ex facie proved that the plaintiffs were not in possession of the suit property, vis-?-vis the decree. They had to seek partition by seeking separate possession had they been in possession of the suit property. The judgment and decree is in respect of 2/7 share of the land measuring 59 kanals 9 marlas consisting of various khasra numbers. Both Bagha Singh and Shahra Singh were co-owners to the extent of 1/7 share. Thus, the finding of the Lower Appellate Court by setting-aside the judgment and decree dated 16.10.1993 to the extent of 1/7th share co-owned by Bagha Singh, in my view, is not the correct finding as the Lower Appellate Court has not noticed the applicability of provisions of Article 58 of the Limitation Act. In case, the plea as coined by the plaintiffs is accepted, then there would be no end to the litigation. Every suit can be instituted at any time and the provisions of the Limitation Act can be easily circumvented. Such practice, in my view, should be deprecated.

11. For the reasons aforementioned, the questions of law, noticed above, are answered in favour of the appellant-defendants and against the respondent-plaintiffs. In my view, the findings rendered by the Lower Appellate Court suffer from illegality and perversity and not based on the appreciation of oral and documentary evidence brought on record. The impugned judgment and decree dated 5.5.2012 are hereby set-aside and the suit is accordingly dismissed.

The appeals are allowed.

There shall be no order as to costs.