
(2002) 10 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4139 of 2002

Puran Singh

APPELLANT

Vs

Nathu and Another

RESPONDENT

Date of Decision : 17-10-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 5, Order 7 Rule 1, Order 7 Rule 1(J)

Citation : (2003) 2 CivCC 74 : (2003) 133 PLR 287 : (2003) 1 RCR(Civil) 720

Hon'ble Judges : Jasbir Singh, J

Bench : Single Bench

Advocate : S.P. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Jasbir Singh, J.—Arguments addressed by counsel and a reading of paper book reveal that Beeru Ram son of Mansa Ram was owner of agricultural land in dispute. He suffered a judgment and decree regarding that land in favour of Nathu Ram, respondent No. 1 on January 4, 1986. That judgment and decree were challenged by appellant Puran Vide ex parte judgment and decree dated May 13, 1987, judgment and decree dated January 4, 1986, were set aside. Consequently, changes were effected in favour of Puran in the revenue record. Then Nathu Ram filed an application under Order 9 Rule 13 of the CPC for setting aside ex parte judgment and decree dated May 13, 1987. His application was allowed on July 20, 1993 and proceedings were initiated in original suit filed by Puran challenging judgment and decree dated January 4, 1986. During pendency of those proceedings. Puran made a statement on August 13, 1994, withdrawing his suit. Regarding remaining plaintiffs in that suit, it was dismissed in default because of their absence on that date.

2. It is also apparent from the records that in the meantime, Beeru Ram, original owner of property in dispute, also laid challenge to judgment and decree dated January 4, 1986, by filing a suit. His suit was dismissed in default. Perusal of records also indicates that during pendency of proceedings wherein challenge

was made to the judgment and decree dated January 4, 1986, Beeru Ram and Puran joined hands together and former suffered decree in favour of latter on August 28, 1989, regarding same property, which was subject matter of judgment and decree dated January 4, 1986. Nathu Ram when came to know about subsequent judgment and decree passed in favour of Puran, filed civil suit No. 593 of 1995, wherein he sought declaration to the effect that judgment and decree dated August 28, 1989, in favour of Puran Chand be declared null and void being collusive one. It was also prayed that mutation No. 46 sanctioned on September 22, 1990 be set aside. It was also stated that he be declared exclusive owner in possession of land in dispute, on the basis of judgment and decree dated January 4, 1986, which has since become final between the parties. Similarly, Puran Chand also filed a suit for injunction with a prayer that Nathu Ram be restrained from interfering in his peaceful possession of the property in dispute of which he had become owner on the basis of judgment and decree dated August 28, 1989 and also on the basis of entries in revenue record.

3. Both these suits were consolidated and tried together by trial Court, which decreed suit No. 593 of 1995 titled as Nathu Ram v. Puran and Anr. and dismissed civil suit No. 792 of 1994 titled as Puran v. Nathu Ram judgment and decree dated August 28, 1989, were declared null and void. Consequent mutation No. 46, sanctioned on September, 22, 1990, was also set aside. Puran Chand went in appeal, which was dismissed. Hence this Regular Second Appeal.

4. Sh. S.P.Singh, Advocate appearing on behalf of appellant has vehemently contended that suit filed by Nathu Ram was hopelessly time barred. Decree was passed in favour of the appellant on August 28, 1989. Suit challenging that decree was filed in the month of March, 1995. Suit was liable to be dismissed as the same was filed beyond period of limitation. He has stated that limitation to challenge that decree was three years only. He has relied upon the judgment in State of Punjab and Ors. v. Gurdev Singh, Ashok Kumar A.I.R.1991 SC 2219, to support his contention. Shri Singh has further argued that appellant was in possession and as such courts were bound to issue injunction in his favour. He also stated that verification of plaint was not correct. There existed non compliance of the provisions of Order 7 Rule 1(j) and Order 20 Rule 5 of CPC and as such suit was liable to be dismissed. He prayed that appeal be accepted and judgment and decree passed be set aside.

5. This court feels that arguments advanced are totally misconceived. Appellant in connivance with his father Beeru Ram had made an attempt to commit a fraud even with the Courts. Beeru Ram suffered a decree in favour of Nathu Ram on January 4, 1986. He ceased to be owner of the property in dispute on passing of that judgment and decree. Puran Chand filed a suit, wherein he challenged judgment and decree dated January 4, 1986. His suit was decreed ex parte on May 13, 1997. Nathu Ram moved an application under Order 9 Rule 13 of the CPC for setting aside ex parte judgment and decree which was allowed on July 20, 1993. Suit filed by Puran Chand challenging decree dated January 4, 1994,

was pending when he made a statement on August 13, 1994, withdrawing his suit. That suit was dismissed in default qua his brother. In this manner judgment and decree dated January 4, 1986 had become final between the parties. Beeru Ram also filed suit challenge judgment and decree dated January 4, 1986 which was dismissed in default. In the meantime, both of them connived together and Berru Ram suffered judgment and decree dated August 23, 1989, in favour of Puran Chand knowing fully well that he had no interest left in the property in dispute. Puran Chand made no mention of judgment and decree dated August 28, 1989, in proceedings, which were pending in suit filed by him which was ultimately dismissed as withdrawn on August 13, 1994 on his statement, hi this manner, it is apparent that action of Beeru Ram and Puran Chand is fraudulent. In suit, which was decreed on August 28, 1989. Nathu Ram was not a party. No objection was raised regarding limitation before trial Court. No issue was passed. No evidence was led as to when and on what date Nathu Ram came to know about passing of judgment and decree dated August 28, 1989. No doubt, limitation is a question of law and that can be raised at any stage but facts and circumstances of this case are such that to raise objection of limitation, it had to be pleaded and proved that Nathu Ram had knowledge of judgment and decree dated August 28, 1989.

6. In the plaint, which was read at the time of arguments, Nathu Ram had specifically pleaded that cause of action had accrued to him when he received a notice of suit filed by Puran, wherein he claimed ownership of property in dispute on the basis of civil court decree dated August 28, 1989 and mutation No. 46 dated September 22, 1990.

7. It is admitted at the time of arguments by counsel for appellants that objection regarding limitation was not raised before trial Court. Had that objection been raised, Nathu Ram could have explained by filing replication as to when he came to know, about judgment and decree dated August 28, 1989, in which he was not a party. In view of peculiar facts and circumstances of the case, no relief can be given to appellant on the basis of judgment passed by their Lordships of the Supreme Court Gurdev Singh, Ashok Kumar "s case (supra). That judgment is not applicable to the facts and circumstances of this case as mentioned above.

8. So far as other objections regarding defect in verification and non-compliance of the provision of Order 7 Rule 1(j) and Order 20 Rule 5 are concerned, both the Courts below have gone into this aspect of the matter. These are only technical objections, which do not go into the root of the case. Facts of the case are such that appellant Puran is not entitled to any relief from this Court. By his own act and conduct, he and his father Sh. Beeru Ram had tried to use legal process to enhance their mala fide objectives. When judgment and decree dated August 28, 1989 was passed, proceedings challenging earlier judgment and decree dated January 4, 1989 were still pending. It was known to them that unless that judgment and decree dated January 4, 1989, were set aside, Beeru Ram had not

transferable interest in the property in dispute but still both of them, without impleading Nathu Ram as a party, got passed judgment and decree dated August 28, 1989. Not only this, factum of passing of subsequent judgment and decree was not even discussed when earlier suit was dismissed as withdrawn by Puran Chand on August 13, 1994.

9. In view of the facts mentioned above and also keeping in view facts discussed by both the Courts below counsel for appellant has failed to make out any substantial question of law, on the basis of which any interference can be made in concurrent findings of fact.