

(2008) 01 P&H CK 0216
In the Punjab And Haryana At Chandigarh

Rattan Singh (Dead) represented by his Legal Representatives	APPELLANT
Vs	
Rang Lal and Others	RESPONDENT

Date of Decision : 14-01-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 9

Citation : (2008) 2 CivCC 567 : (2008) 2 PLR 391 : (2008) 3 RCR(Civil) 310

Hon'ble Judges : Tej Pratap Singh Mann, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T.P.S. Mann, J.—Present respondents No. 1 to 4 filed a suit in representative capacity, being co-sharers of Shamlat Deh of village Jawan, against the present appellant and respondents No. 5 to 8, wherein they sought declaration that decree dated 12.5.1972 passed in suit No. 10 dated 30.11.1971 was null and void and not binding upon them being obtained by fraud, collusion, illegal and without jurisdiction. They also sought consequential relief of possession. This suit was decreed by learned Sub Judge, IIInd Class, Faridabad on 11.5.1983. Aggrieved of the same, the present appellant, along with respondents No. 7 and 8, filed an appeal which was dismissed by learned Additional District Judge, Faridabad on 4.8.2004. Hence, the present second appeal.

2. The case of the plaintiffs was that Rattan Singh had filed suit No. 10 dated 30.11.1971 against Nathi, Bhajan Lal, Thakar Lal and others in representative capacity which suit was decreed on admission. It was alleged that the suit land was earlier transferred from Panchayat Deh to Shamlat Deh and mutation had, accordingly, been sanctioned. Later on, Rattan Singh hatched a conspiracy with Nathi and others so as to deprive the village Panchayat of the suit land and, accordingly, suit No. 10 dated 30.11.1971 was filed by him, wherein he claimed himself to be a tenant on the suit land for 30 years, knowing full well that he was not a tenant as such. Nathi and two others admitted his claim and the suit came to be decreed on 12.5.1972. Mutation No. 34 was entered in favour of Rattan

Singh, but the same was illegal as based upon decree dated 12.5.1972 which had been obtained by collusion and fraud. The plaintiffs in the present suit came to know of the decree only in the year 1980 and they, thus, sought the setting aside of the same.

3. Rattan Singh, Bhajan Lal and Thakur Lal opposed the suit by filing a written statement pleading therein "that the plaintiffs were estopped by their act and conduct from filing the suit; that the suit had not been filed properly under Order 1 Rule 5 C.P.C; that the Court had no jurisdiction to try the suit and that the plaintiffs had no locus standi to file the present suit. These defendants, however, admitted the plaintiffs to be the residents of village Jawan, but denied that they were co-sharers and partners in the suit land. They also denied that any conspiracy was hatched by Rattan Singh-defendant, when he filed the suit, which was thereafter decreed On 12.5.1972. They, accordingly, prayed for the dismissal of the suit.

4. It may not be out of place to mention here that Nathi-defendant No. 2 in the present suit, filed his independent written statement, wherein he admitted the claim of the plaintiffs.

5. From the pleadings of the parties, learned trial Court framed the following issues:

1. Whether the decree dated 12.5.1972 in suit No. 10 of 1971 is null and void as alleged? OPP
2. Whether the suit is within time? OPD
3. Whether the suit is barred by principle of res judicata? OPD
4. Whether the plaintiffs are estopped by their own act and conduct from filing this suit? OPD
5. Whether the suit has not been filed properly? OPD
6. Whether this Court has got no jurisdiction to try this suit? OPD
7. Whether the plaintiffs have no locus standi to file this suit ? OPD
8. Relief.

6. It is clear from the records that suit No. 10 dated 30.1.1971 was filed by Rattan Singh against Nathi and others in a representative capacity. However, there is no evidence available on the file from where it could be inferred that any proclamation had been effected in the village so that the share-holders of the village could raise their objections. Once the earlier suit had been decreed on the admission made by Nathi, Bhajan Lal and Thakar Lal alone whereas other biswedars had not been called upon to submit their objections, the decree dated 12.5.1972 could not be held binding upon plaintiffs and other similarly situated biswedars of the village. Out of the aforementioned four persons, Nathi-defendant No. 2 in the present suit, filed his written statement, wherein he

accepted the claim of the plaintiffs. Moreover, in the earlier suit Rattan Singh had obtained a decree on the basis of an admission made by Bhajan Lal and, Thakar Lal, besides Nathi. Both Bhajan Lal and Thakar Lal joined hands with Rattan Singh in the present suit to file a joint written statement.

7. Though, the appellants had taken the plea that the present suit was not within time, yet it has come in the evidence that the plaintiffs came to know of the earlier decree passed on 12.5.1972 in the year 1980 and the suit was thereafter filed in November, 1980. Though, the appellant has filed an application bearing CM. No. 3128-C of 1984 under Order XLI Rule 27, Order XVIII Rule 17-A read with Section 151 C.P.C. for production of additional evidence so as to bring into evidence copy of the Roznamcha Wakiati for the year 1975-76 and then to contend that Rang Lal, plaintiff in the present suit and respondent No. 1 herein, was present on 25.3.1976 at the time when Halqa Patwari held the girdawari for Rabi 1976 regarding the ownership, title and possession in the revenue records, yet, even a perusal of the same would show that the same pertained to land situated in Khasra No. 33, whereas the suit land was situated in Khasra Nos. 34 and 44. Moreover, such a document could be brought on record by the appellant at the initial stage or in any case when the appeal was filed before the learned lower appellate Court which was not done. As such, the appellant cannot be allowed to bring the aforementioned document into evidence by way of additional evidence in the second appeal. The application filed for the purpose is, therefore, declined.

8. As the plaintiffs were not party in the earlier litigation which culminated in a collusive decree on 12.5.1972, therefore, the issue of res judicata does not arise for consideration.

9. There was no bar to the trial of the present suit. Section 9 C.P.C vests the civil Court with jurisdiction to try all suits of civil nature, unless there is any specific bar to the same. In the present suit the decree dated 12.5.1972 has been shown to be illegal, having been obtained by fraud and collusion and that too without proper proclamation in the village as contemplated by Order 1 Rule 8 C.P.C, and therefore, the civil Court was now competent to entertain the present suit and try the same.

10. In view of the above, substantial questions of law, as claimed by the appellant, do not arise for consideration. There is no case made out for interference in the concurrent findings of facts arrived at by the learned lower Courts. The appeal, being without any merit, is hereby dismissed with no order as to costs.