
(1986) 03 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1322 of 1977

Soran Gir

APPELLANT

Vs

Manjit Singh and Others

RESPONDENT

Date of Decision : 05-03-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (1986) 03 P&H CK 0014

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : M.S. Jain, for Mr. Adish Gupta and Miss Sarita Gupta, for the Appellant; Anand Swarup and Mr. Manoj Swarup, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Sehgal, J.—Manjit Singh Plaintiff Respondent No. 1 filed a suit against Soran Gir Appellant and 3 others, who are now arrayed as Respondents Nos. 2 to 4 in this appeal, seeking a decree for declaration and possession of agricultural land measuring 10 Bighas 3 Biswas. He alleged that he was the owner of agricultural land measuring 40 Bighas 10 Biswas situate in village Garhi Poran detailed in Para 1 of the plaint, which he had purchased from Smt. Kori Defendant-Respondent No. 2 vide sale deed dated 26.9.1968 fix. P. 1. Defendant-Respondent No. 2 had filed civil suit No. 516 of 1960 in the Court of the learned Sub Judge, Kaithal, for possession of this land against Defendant Respondent Nos. 3 and 4 and others on the grounds that the said Defendants had by misrepresentation got the said land mutated in their favour and had taken possession of the same falsely alleging that Smt. Kori had died. This suit was decreed on 29-4-1960 vide judgment Ex. P. 6. She obtained possession of the land in execution of the said decree on 9-1-1962. Soran Gir, the Defendant-Appellant, instituted a suit against Smt. Kori, Smt. Bakhtawari and Bhagtu Defendants Nos. 2 to 4 for declaration and possession of land measuring 10 Bighas 3 Biswas, being 1/4th share of the entire suit land and the same was

decreed ex parte in his favour on 4-3-1963. Manjit Singh Plaintiff Respondent No. 1 alleged that this decree had been obtained by Soran Gir by intentionally suppressing the real and true facts and without disclosing the decree dated 22-4-1960 in favour of Smt Kori. It may be mentioned that in the judgment dated 29-4-1960 Ex P. 6 it was held that Smt. Bakhtawari had no right in the suit land and that its real owner was Smt. Kori and that is why her suit for possession was decreed. Soran Gir claimed to have purchased 1/4th share of the suit land from Smt. Bakhtawari vide sale deed dated 28-11-1958 Ex. D 1,/A Since Smt. Bakhtawari had no title in the suit land, she could not pass on any such title to Soran Gir. A perusal of the sale deed Ext. D.I/A shows that Smt. Bakhtawari sold away half of the suit land to Bhagtu Defendant Respondent No. 3 and Soran Gir, the Defendant Appellant, in equal shares. Thus, both of them got a common title to the sale deed Exhibit D.I/A. Bhagtu filed a suit for permanent injunction against Smt. Kori wherein he also impleaded Soran Gir as a proforma Defendant. He claimed title to 1/4th share of the suit land by virtue of sale-deed Ex; D. 1/A; This suit was dismissed vide judgment, dated 2.12.1965 Ex D. A. An appeal filed by Bhagtu was dismissed vide judgment dated 7.10.1967 Ex. P. 5. On this basis, the Plaintiff Respondent No. 1 contended that vide judgment Exs. DA and P. 5 the title of Bhagtu and Soran Gir had been held to be non-existent. He alleged that the judgment and the decree dated 4.3.1963 Exs P. 3 and P. 4 obtained by the Defendant Appellant were fraudulent and inoperative; had been secured by giving wrong address of Smt. Kori; and Soran Gir had obtained a false report of service of summons of the suit giving rise to the aforesaid judgment and the decree in collusion with the process-server. He further alleged that he came to know of the said decree on 1.13.1968 when he went to take possession of the land. He, thus, contended that the possession of the Defendant Appellant was unlawful on the land measuring 13 Biswas and since he had refused to surrender the same, the suit for declaration that the decree dated 4.3.1963 had been obtained by the Defendant Appellant was fraudulent and inoperative and not binding on his rights with consequential relief for possession was filed by him.

2. Smt. Kori Defendant-Respondent No. 2 filed her written statement admitting all the averments made in plaint. Smt. Bakhtawari defendant-Respondent No. 3 was proceeded against ex-parte. The Defendant Appellant contested the suit denying the allegations made therein and asserted that the decree dated 4.3.1963 obtained by him was valid, operative and was not liable to be set aside. The suit was alleged to be barred by time, not in proper form and also barred u/s 47, Code of Civil Procedure. It was pleaded that the Plaintiff-Respondent No. 1 was aware of the said decree when it was passed. Bhagtu Defendant-Respondent No. 4 filed his written statement denying the allegations made in the plaint. He, however, pleaded that he had been unnecessarily made party to the suit.

3. After trial the learned Sub Judge I Ind Class, Kaithal, vide judgment and decree dated 25.4.1973 dismissed the suit. He, however held under issue No. 4 that the suit was not barred by time. An appeal filed by the Plaintiff Respondent No. 1 before the learned Senior Sub Judge, Karnal, succeeded. The judgment

and the decree of the learned trial Court were reversed and the suit of the Plaintiff-Respondent No. 1 was decreed by the learned Senior Sub Judge in appeal vide judgment and decree dated 8.6.1977. Soran Gir Defendant No. 1 is the Appellant in the present appeal from the said judgment and the decree.

4. I have heard the learned Counsel for the parties at length. Mr. M. S. Jain the learned Senior Advocate, appearing for the Appellant, contended that the suit instituted on 30.12.1969 was clearly barred by limitation which was governed by Article 59 of the Limitation Act, 1963. The suit could be filed within three years from the date of the knowledge of the decree. The decree was admittedly passed on 4.3.1963. He contended that in the suit filed by Bhagtu Respondent on 14.5.1964 Smt. Kori had been duly served. Bhagtu in his suit had made specific mention of the decree in question in favour of the Appellant. Smt. Kori contested that suit and thus got knowledge of the decree at least on 2.12.1965 when the suit of Bhagtu was dismissed vide judgment Ex. D.A. The suit at the latest could be filed by Smt. Kori questioning the decree in favour of the Appellant upto 1.12.1968. She did not take any step in the matter. Rather it was subsequent thereto that she sold the suit land to Respondent No. 1 on 26.9.1968 vide sale deed Ex. P. 1. Since any suit filed by Smt. Kori after 1.12.1968 would have been barred by time, the Plaintiff Respondent No. 1 who is her successor-in interest, has stepped into her shoes and as such the present suit filed by him is hopelessly barred by time.

5. I have considered this argument with reference to the evidence on the record. I am not convinced by the same. The judgment Ex. D.I/A dismissing the suit of Bhagtu no doubt makes mention of the decree dated 4.3.1963 obtained by the Appellant against Smt. Kori. This, however, by itself is not sufficient to constitute knowledge of the decree by Smt Kori. The plaint of the suit filed by Bhagtu which resulted in the judgment Ex. D.I/A has for the reasons test known to the Appellant not been brought on the record. The contents of the plaint alone could show whether or not there was any mention therein of the decree dated 4.3.1963 and whether particulars thereof so mentioned were sufficient to give knowledge of the same to Smt Kori. Reference to the judgment Ex. D.I/A by itself is not sufficient to give a starting point for the limitation for a suit to be filed by Smt Kori or her successor-in-interest for impugning the decree dated 4.3.1963. The position on the record rather favours Respondent No. 1. The judgment of the learned Additional District Judge, Karnal, dated 7.1.1967 Ex. P. 5 on an appeal by Bhagtu against the judgment Ex D.I/A inter-alia contains the following observations:-

Bhagat Ram and Soran had stepped into the shoes of Smt. Bakhtawari. The latter being not owner could not pass any title on them. When Smt. Kori's suit was decided it was held that she was the owner. The sale deed became a waste paper and that finding would now operate as res judicata against Smt. Bakhtawari and her successor-in-interest.

6. Though arguments taking support of the provisions of the Limitation Act and

some precedents addressed by Mr. Jain are of no avail, in all fairness to him I find it appropriate to make a brief mention of the same. He pointed out that Section 17 of the Limitation Act, 1963 lays down that where in the case of any suit for which the limitation is prescribed by the Act, the suit is based upon the fraud of the Defendant the period of limitation does not begin to run until the Plaintiff has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it. On the basis of Syed Shah Ghulam Ghouse Mohiuddin and Others Vs. Syed Shah Ahmed Mohiuddin Kamisul Quadri (Died) by Lrs. and Others, , he contended that it was for the Plaintiff to establish that there had been a fraud and that by such fraud he had been kept away from knowledge of his right to or of the title whereon it is founded. Again, relying on the judgment Ex D. 1/A, he contends that Smt Kori could have discovered the alleged fraud on 2.12.1965 when Bhagtu's suit was dismissed vide aforesaid judgment. Simply because she did not take care to resort to appropriate proceedings for setting aside the decree dated 4.3.1963 thereafter and instead sold the property to the Plaintiff-Respondent No. 1 could not contend that he for the first time got knowledge of the said decree on 1.10.1968 when he is alleged to have gone to take possession of the suit land. Referring to the observations of the learned Senior Sub Judge that the suit of the Plaintiff for possession without avoiding the decree dated 4.3.1963 was maintainable and was governed by Article 65 of the Limitation Act the prescribed period for the same being 12 years, he asserted that this observation runs counter to the law laid down in Ekawari and Others Vs. Jadunandan Kamat and Others, . The suit had been filed for setting aside the decree on the ground of fraud and for possession. The suit for the first relief of setting aside the decree being barred by limitation the Plaintiff could not be allowed the relief of possession under Article 65 of the Limitation Act by disregarding the primary relief of setting aside the decree claimed by him. With due respect to the learned Judge in Ekawari's case. I am not inclined to follow the observations made therein because of the peculiar circumstances obtaining in the present case.

7. Once it was found in the suit filed by Bhagtu resulting in the judgments Exs. D.1/A and P.5 that the sale deed Ex. D. 1 by virtue of which Bhagtu and the Appellant were claiming title in the land was of no avail as Smt Bakhtawari the vendor, in said sale deed, had no title in the suit property, the Appellant who was a party to the said suit can't fall back on the decree dated 4.3.1963 obtained by him. In my view, it was not necessary for Respondent No 1 to have the said decree set aside before he could maintain his relief for possession of the suit land which he had purchased from its real owner Smt. Kori.

8. A brief reference to the conduct of the Appellant in securing the ex-parte decree dated 4.3.1963 against Smt Kori also becomes necessary. A copy of the proceedings in the suit Ex. P 10 shows that the address of Smt. Kori given in the suit was:-

Smt Kori widow of Mangal Kahar, resident of Garhi Reran, now residing in the

house of Jawala Singh, caste Jat of Pehowa.

She was not served on this address for 20th of July, 1962. The Court had ordered that fresh summons, correct address and registered envelope should be filed within two days for her service for 14.8.1962. It has not been made clear whether her correct address was furnished or not. The case came up before the Court on 16.8.1962. It was found that service on Smt. Kori had not been effected. The report was that she was not residing on the given address. A direction was given that fresh summons be issued on furnishing of correct address, process fee and registered envelope for her service for 10.9.1962. Ex. P. 14 shows that on that day again her service could not be effected and fresh process fee, correct address and registered envelope were directed to be filed for 10.10.1962.

According to Ex. P. 15 the report on the summons again was that she was not residing on the given address. However, the presiding Officer was on leave and the case was directed to be taken up on 23.10.1962, on which date the orders Ex. P. 16 were passed directing furnishing of her correct address, along with process fee etc. for her service for 21.11.1962. The order Ex. P. 17 shows that according to the report Smt. Kori had refused to accept service. Consequently, service on her was directed to be effected by proclamation by beat of drum for 28.12.1962. All these proceedings speak volumes about the manner in which ex-parte proceedings against Smt. Kori were fraudulently secured. It is clear that no effort was made to serve her on the correct address. She appeared in the witness box and stated that she never resided at Pehowa. There is no evidence to the contrary on the record. The learned Counsel stated that Jawala Singh was a witness to the warrant of possession Ex. P. W. 8/A vide which she got possession of the suit land on 9.1.1962 in pursuance of the decree Ex. P. 6 in her favour. That may be so but it cannot be deduced from it that she was residing with Jawala Singh.

9. Even otherwise since the Appellant has no title in the suit land. in my view, he cannot be allowed to take resort to hypertechnicalities to defeat the legitimate right of Respondent No. 1 who is a bona fide purchaser of the suit land from its real owner Smt. Kori. It has been aptly observed in Punjab Mercantile Bank Ltd. Vs. Sardar Kishan Singh, that the power of vacating judgments entered by mistake of relieving against judgment procured by fraud, are among the several inherent powers of the Court. These inherent powers are not conferred on the Court by a statute, but they are necessary to ordinary and efficient exercise of jurisdiction. It is a protective power necessary to the existence and due functioning by the Courts and the due administration of justice. These powers are necessary attributes and concomitants of judicial tribunals. These powers cannot be fettered by taking resort to the law of limitation or any other technical plea. The facts make it evident that there is no equity whatsoever in favour of the Appellant. There is otherwise also no ground on which the present appeal can be sustained.

10. I, therefore, find no force in this appeal, which is dismissed. There shall, however, be no order as to costs.