

Before Gokal Chand Mital, J.

SURJIT KAUR,—Appellant.

versus

MALKIAT SINGH,—Respondent.

Regular Second Appeal No. 2559 of 1980.

20th November, 1990.

Limitation Act (XXXVI of 1963)—Arts. 58 & 59—Fraud—Limitation for bringing suit—Decree obtained by fraud need not be got set aside or cancelled—It can be declared not binding on person on whom fraud is committed—Article 59 does not apply.

Held, that once fraud is committed on the Court in obtaining the decree the principle envisaged in Article 59 of the Limitation Act would not apply. The decree obtained by fraud is not to be get set aside or cancelled. It can be declared to be not binding on the owner on whom fraud was committed and such a suit would fall within Article 58 of the Limitation Act. (Para 15)

Regular Second Appeal from the decree of the Court of Shri T. P. Garg, Addl. District Judge, Sirsa, dated the 17th day of September, 1980, affirming that of Shri J. K. Sud, HCS, Senior Sub Judge, Sirsa, dated the 13th November, 1978, dismissing the suit of the plaintiff, but leaving the parties to bear their own costs.

CLAIM:—for declaration to the effect that the decree and judgment, dated 28th April, 1972 passed by Shri V. P. Chaudhary, Sub Judge 2nd Class, Sirsa, in case No. 2529 of 1972 titled as *Malkiat Singh, son of Arjan Singh, resident of Faridkot versus Jarnail Singh, son of Inder Singh of village Mohammadpur, Salarpur, tehsil Sirsa, regarding the land measuring 90 Kanals 4 Marlas comprised in Square No. 5, killa No. 2, 6, 7, 14, 15, 16, 17, 18, 19, 20, 21; 22, situated in village Mohammadpur, Salarpur, tehsil Sirsa, District Hissar, is ineffective, inoperative, on the rights of the plaintiff and not binding on the plaintiff as this decree is based on fraud, hence it is liable to be set aside and the mutation sanctioned on the basis of this decree is not binding on the plaintiff and is liable to be set aside and for permanent injunction restraining the defendant from alienating the suit land in any manner; of the basis of evidence of every description.*

CLAIM IN APPEAL:—For reversal of the order of both the court's below.

R. S. Mital, Sr. Advocate, with R. L. Sharma, Advocate, for the Appellant.

Arun Nehra, Advocate, for the Respondent.

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JUDGMENT

Gokal Chand Mital, J. (Oral)

(1) This order will dispose of Regular Second Appeal No. 2559 of 1980 and RSA No. 195 of 1981, as the facts hereinafter produced would show that it is necessary to decide these appeals together.

(2) On 25th April, 1972, two suits were filed, one by Malkiat Singh against Jarnail Singh and the other by Harjeet Singh brother of the aforesaid Malkiat Singh against Smt. Surjit Kaur, wife of the aforesaid Jarnail Singh. Both the suits were for declaration that on the basis of the exchange entered into with the defendants, they are the owners of the land, which was owned by the defendants prior to the exchange.

(3) Three days later on 28th April, 1972, written statements on behalf of the defendants were filed through a counsel, who filed the power of attorney alleged to be of the defendants. The written statement filed by Surjit Kaur was alleged to have been signed by her whereas of Jarnail Singh defendant was allegedly thumb marked in which the claims of the plaintiffs in both the suits were admitted.

(4) The trial Court on the same day decreed the suits on the basis of the written statements admitting the claims of the plaintiffs.

(5) On 6th August, 1975, Jarnail Singh and his wife Smt. Surjit Kaur, on coming to know of the fraud, filed two separate suits to challenge the decrees obtained by Malkiat Singh and Harjit Singh respectively, on the ground that they never engaged a counsel, neither signed nor thumb marked any written statement and also disputed the alleged exchange between the parties and thus claimed decrees of declaration that they were not bound by the decrees which were obtained by playing fraud on the Court and thus continued to be owners in possession.

(6) The suits were contested by both the defendants and after a long contest the trial Court held that fraud had been played on Court by Malkiat Singh and Harjit Singh in obtaining the decrees as the plaintiffs in the latter suits (who were defendants in the earlier suits) had not been served; they did not engage any counsel; they neither signed nor thumb marked any written statement and that there was no exchange proved in the cases. The suit filed by

Smt. Surjit Kaur was decreed but the suit filed by her husband Jarnail Singh was dismissed in spite of recording a finding of fraud having been played on the Court on the ground that Jarnail Singh had filed the suit a couple of days beyond three years of his coming to know of the consent decree and was thus time barred.

(7) The judgments and decrees of the trial Court were upheld by the lower appellate Court. In the case of Jarnail Singh, R.S.A. No. 2559 of 1980 has been filed by the legal representatives of Jarnail Singh plaintiff, who died during the pendency of the proceedings and R.S.A. 195 of 1981 is by Harjit Singh against whom Surjit Kaur's suit was decreed and whose appeal remained unsuccessful before the appellate Court.

(8) After going through the record of the case and on consideration of the matter, I am of the view that the finding recorded by the Courts below that Malkiat Singh and Harjit Singh obtained decrees dated 28th April, 1972, by playing fraud on the Court do not call for interference in jurisdiction of this Court in second appeal. Even otherwise the findings are well based.

(9) Malkiat Singh did not appear in the witness box to challenge the evidence led by the plaintiff or to stand the test of cross-examination.

(10) Both the Courts below have considered the material on record and every aspect of the case, and on appraisal thereof have recorded a finding that both the decrees were obtained by the respective plaintiffs of the earlier suits by playing fraud on the Court. The Courts below also found that the land remained in the respective possession of the original owners and that the land of Malkiat Singh and Harjit Singh was acquired and they pocketed the compensation of the same. If the exchange had been arrived at or the decrees had been obtained by the consent of the parties, then the parties would have exchanged their possession and the exchanged possession would have been recorded in the mutation proceedings as well as in the revenue records. In a way Malkiat Singh and Harjit Singh tried to play total fraud on Jarnail Singh and his wife Surjit Kaur by obtaining the land owned by them and retaining their own land and on acquisition thereof in taking the compensation thereof. Accordingly, I uphold the findings of the two Courts below regarding the obtaining of decrees by Malkiat Singh and Harjit Singh by fraud and having no effect on the rights of Jarnail Singh and Smt. Surjit Kaur.

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(11) As regards R.S.A. No. 195 of 1981, no other point arises for consideration and the appeal is dismissed with costs throughout.

(12) Reverting to R.S.A. No. 2559 of 1980, the only remaining point for consideration is whether the suit filed by Jarnail Singh is time barred. The trial Court has referred to a mutation for fixing knowledge of the fraud played on Jarnail Singh by Malkiat Singh in obtaining decrees on the basis of forged written statement. The so-called mutation was on the record of the file without being formally exhibited or proved. In the plaint filed by Jarnail Singh he had mentioned that neither the alleged decree dated 28th April, 1972 nor the mutation which Malkiat Singh got sanctioned on the basis of that decree was binding on him. From this, the trial Court drew an inference that Jarnail Singh was aware of the mutation and it proceeded to exhibit the document without following the procedure known to law for exhibiting a document.

(13) Firstly, the procedure adopted by the trial Court was erroneous and if this mutation is ruled out of consideration then there is no evidence on the record about fixing the knowledge of Jarnail Singh beyond three years of filing the suit.

(14) Even if the mutation, which was exhibited as DQ is taken into consideration this does not give the cause to fix knowledge of Jarnail Singh on the day the mutation was sanctioned. In fixing the knowledge of Jarnail Singh on the date of sanctioning the mutation the fact attributed is that it is mentioned in the mutation that Jarnail Singh is present. Once Malkiat Singh could commit fraud by forging signatures of Jarnail Singh on Vakalatnama and written statement, getting the presence of Jarnail Singh recorded in the mutation proceedings would not be difficult for him. The more important fact in this behalf is that when Jarnail Singh appeared in the witness box he was not put the question that he was present at the time of sanctioning of the mutation. There was no plea on behalf of Malkiat Singh that Jarnail Singh was present at the time of sanction of the mutation nor any evidence was led in this behalf. It was also not shown that Jarnail Singh had come to know of the alleged decree dated 28th April, 1972 on any day prior to three years of the filing of the suit. The plaintiff has shown that his suit was within time from the date of knowledge and there is no rebuttal.

(15) The matter may be considered from another aspect. Once fraud is committed on the Court in obtaining the decree the principle envisaged in Article 59 of the Limitation Act would not apply.

The decree obtained by fraud is not to be get set aside or cancelled. To my mind, it can be declared to be not binding on the owner on whom fraud was committed and such a suit would fall within Article 58 of the Limitation Act. As already noticed, Jarnail Singh continued to be in possession of the land which he owned before the alleged exchange in spite of the alleged exchange and the fraudulent decree. As and when his possession was sought to be disturbed from that property, the period of three years would start and in this case there is no evidence if Malkiat Singh ever tried to disturb his possession prior to the filing of the suit. In support of the point, reference may be made to *Ibrahim alias Dharamvir v. Smt. Sharifan alias Shanti* (1).

(16) Accordingly, I am of the view that the Courts below erred in law in coming to the conclusion that the suit was time barred. The finding of the Courts below on the point of limitation are reversed and it is held that the suit is not proved to be time barred. In the result R.S.A. No. 2589 of 1980 is allowed and the suit filed by the plaintiff is decreed by granting a declaration that the decree dated 28th April, 1971 obtained by Malkiat Singh against Jarnail Singh would not effect the rights of Jarnail Singh and after his death his legal representatives, since he has died during the pendency of the proceedings, and Jarnail Singh and after him his legal representatives continue to be the owners in possession of the land and Malkiat Singh has no interest therein. The appellant shall have the costs of the proceedings from Malkiat Singh throughout.

R.N.R.

Before J. B. Garg, J.

SUBHASH CHANDER AWASTHY,—*Petitioner,*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 8748-M of 1990.

5th December, 1990.

Criminal Procedure Code, 1973 (II of 1974)—S. 482—Indian Penal Code, 1860—S. 409—Service terminated on ground of con-

(1) 1979 P.L.J. 469.