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## **Punjab Singh Vs Shugan and Others**

### **Regular Second Appeal No. 1222 of 1986**

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**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Nov. 1, 1991

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) â€” Order 41 Rule 27, 151#Limitation Act, 1963 â€” Article 65

**Hon'ble Judges:** V.K. Bali, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

V.K. Bali, J.

Punjab Singh, plaintiff, who succeeded before the trial court in establishing his right of succession to the estate of one Hira

Devi after her demise, lost his cause before the first appellate court only on the ground of limitation, has come before this Court by way of regular

second appeal.

2. Facts that are necessary to determine controversy between the parties may first be enumerated. The property of one Kundan who died in 1969

was inherited by his two sons, widow of another son who had pre-deceased Kundan and sons of another son who too had predeceased Kundan,

in equal shares. Des Raj, Badan, Babu Ram and Punjab Singh alias Punjaba were the four sons of Kundan, whereas Smt. Hira Devi is the widow

of predeceased son Babu Ram. Badan also predeceased Kundan, Inasmuch as Badan was survived by two sons namely Pitambar and Dharam

Pal, they succeeded to the estate of Kundan that would have come to the share of their father Badan. Likewise Smt. Hira Devi succeeded to the

share that would have been inherited by Babu Ram. She died on 6th June, 1980. Before her death, however, three sons of Des Raj (died in the

year 1979), namely Shugan, Lapati Singh and Ved Pal got a decree on alleged consent of Smt. Hira Devi on 4th May, 1972, vide which the entire

property of Hira Devi was transferred in favour of three sons of Des Raj on account of family settlement. After the demise of Smt. Hira Devi,

Punjab Singh filed a suit for joint possession against three sons of Des Raj claiming himself to be the rightful person to succeed to the estate of Hira

Devi and styling the decree obtained by sons of Des Raj to be void and nonexistent inasmuch as Hira Devi had never appeared before any court

nor consented to part away with her estate to the sons of Des Raj. The case was contested by the sons of Des Raj (hereinafter to be referred to as

defendants) on various grounds, like the plaintiff had no locus standi to file the suit; the suit was not maintainable and not within time; the plaintiff

was estopped from filing the suit by his own act and conduct; it was bad for non-joinder of parties and cause of action and that it was not properly

valued for purpose of court fee and jurisdiction. It was further pleaded in the written statement that the decree was not collusive and, in fact, had

come into being in accordance with law, as also that the plaintiff was aware of the institution of the suit and the decree having been obtained by the

defendants. Pleadings of the parties gave rise to the following issues:

(1) Whether the decree of the Civil Court dated 4.3.1972 passed in Civil Suit No. 71/72 by Sh. S.C. Juneja, Sub Judge, Karnal, is null and void,

as alleged? OPP

(2) Whether plaintiff has no locus standi to file the present suit? OPD

(3) Whether the suit is not maintainable in the present form? OPD

(4) Whether the suit is not within limitation? OPD

(5) Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD

(6) Whether the suit is bad for multifariousness? OPD

(7) Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD

(8) Relief.

An additional issue No. 1(a) was also framed by order dated 5th March, 1983, which runs thus:

Whether the plaintiff is entitled to the entire land in dispute once standing in the name of Hira Devi deceased? OPP

Issue No. 1 was recast on 21st August, 1984, so as to read as follows:

Whether the decree of Civil Court dated 4.3.1972 passed in Civil Suit No. 71 of 1972 passed by Shri Subash Chander learned Sub Judge,

Kamal, is null and void as alleged?"" OPP

After the resultant trial Sub Judge 1st Class, Karnal while holding that the decree dated 4th March, 1972, passed by Sh. Subhash Chander, Sub

Judge Karnal, was null and void having been obtained by securing thumb impressions of somebody else which were not of Smt. Hira Devi and,

thus, could not confer any right on the defendants and also holding that since such a decree could be avoided any ties as no limitation was involved

to challenge the same, decreed the suit. Feeling aggrieved, the defendants preferred an appeal before District Judge, Karnal which came up for

final disposal before the Additional District Judge on 10th March, 1986, who, on the date mentioned, reversed the judgment and decree passed by

the trial court and dismissed the suit. It is pertinent to mention that whereas finding recorded by the trial court on invalidity of the decree of the Civil

Court dated 4th March, 1972, was upheld, the findings of the trial court with regard to limitation were set aside and it is only in consequence of

reversal of the findings with regard to the limitation that the suit was dismissed by the first appellate court. As indicated above, it is against this

judgment and decree of the first appellate court that Punjab Singh has preferred the present regular second appeal.

3. During the pendency of the appeal, the appellant filed civil miscellaneous (O.M. No. 883-C/1989) D.O. at Rule 27 read with Section 151 of

the CPC so as to bring on record date of attestation of Jamabandi relating to villager Koar, Tehsil and District Karnal for the year 1975-76 by

summoning Sadar Kanungo in the office of Collector Karnal alongwith original record regarding preparation, alteration and consignment of the

aforesaid Jamabandi. The averment in the application aforesaid would go to show that as per the appellant, vide jamabandi for the year 1975-76

on which reliance has been placed by the first appellate court for dismissing the suit of the appellant on the ground of limitation was in fact, attested

by the revenue official concerned on 17th January, 1978, and it was made public only thereafter. The defendant also filed an application bearing

C.N. No. 886C/1989 D.O.41 Rule 27 read with Section 151. Code of Civil Procedure, so as to compare disputed thumb impression, i.e. the

thumb impressions on the statement made by Smt. Hira Devi in court as also the thumb impressions available on the power of attorney given by her

to her lawyer with thumb impressions of Hira Devi said to available in the daily diary of revenue patwari. As per averments made in the application

the case of the defendants is that when mutation on the basis of the decree obtained by them was sanctioned by the revenue officials, Hira Devi

was present and had thumb-marked the said entry. Reply to both these applications was filed by the respective parties who opposed the

applications. The applications were ordered to be heard alongwith the main case vide orders dated 15th March, 1989.

5. It would be appropriate to take the application of the defendants first. The narration of the facts given above as also the findings recorded by

both the courts go to show that Smt. Hira Devi had never consented to the decree that came into being in favour of the defendants on 4th March,

1972. The defendants obtained thumb impressions on the written statement as also on the power of attorney, of somebody else. So much so,

when the statement of Smt. Hira Devi was to be recorded in the court, some other lady was produced to do the job. There is sample evidence led

in the case to show that the defendants committed fraud not only on Smt. Hira Devi but also the court in obtaining the decree vide which her entire

property was transferred in their favour on 4th March, 1972. The present application is nothing but a feeble attempt to rebut the evidence by

asserting and proving that atleast before the revenue officials, when in consequence of the decree aforesaid mutation was to be sanctioned in favour

of the defendants, it is Smt. Hira Devi who thumb marked the proceedings recorded at that time. It is pertinent to mention here that not a single

word could be urged by the learned Counsel for the defendants to say that the findings of fraud recorded by both the courts were not correct. I am

unable to understand as to how even if the aforesaid evidence is permitted to be brought on record by way of additional evidence it would advance

the case of the defendants. The rights were transferred only by way of the degree and if the decree is an outright act of concoction and forgery,

sanction of the mutation would not validate the said act of fraud. However, if the intention of producing the aforesaid evidence by way of additional

evidence is to pinpoint the date of knowledge of Smt. Hira Devi with regard to a decree that she be of no use to the defendants, inasmuch as on

the main question of limitation involved in the present case in the later part of this judgment I am going to hold that the decree being non est was not

required to be avoided and a suit for possession within 12 years as per limitation prescribed under Article 65 of the Limitation Act would be well

within time. The application for additional evidence can also not be allowed for yet another reason that the appellant Punjab Singh does not admit

that Smt. Hira Devi ever thumb marked daily diary of the Patwari at a time when possession was delivered to the defendants in pursuance of the

decree alleged to have been suffered by Smt. Hira Devi. Comparison of signatures or thumb impressions has some meaning only if the comparison

of disputed signatures or thumb impressions is done with proved or admitted signatures or thumb impressions. It is rather strange to note that the

prayer is only for comparison of the thumb impressions available on the written statement and the statement made in court with the alleged thumb

impressions of Smt. Hira Devi on the daily diary of the Patwari. The prayer is not for comparison of the thumb impressions of Smt. Hira Devi

which are available on the mortgage deed and which thumb impressions of Smt. Hira Devi are proved or admitted between the parties. It is

possible that the very lady who thumb marked the written statement and the statement given in court might have thumb marked the daily diary of

the revenue patwari as well. In the circumstances fully detailed above I dismiss the application filed on behalf of the defendants for leading

additional evidence. Coming now to the application moved by Punjab Singh, appellant, suffice it to say that the same also deserves to be dismissed

but on the ground that on the main question of limitation I am going to hold that even if mutation was sanctioned and the same was incorporated in

the jamabandi for the year 1975-76, the suit could be within limitation inasmuch as the decree of the kind that the defendants obtained did not

require to be specifically be set aside. The application of the appellant for additional evidence is also, therefore, dismissed.

6. Coming now to the core of the controversy, it will be useful to first mention that it is not disputed between the parties that as per natural

succession, on the demise of Smt. Hira Devi, Punjab Singh appellant has a prior right of succession. In other words, it is admitted that on the

demise of Smt. Hira Devi, husband's brother would succeed in preference to the sons of the brother of Smt. Hira Devi's husband. As mentioned

earlier, both the courts have returned a positive finding of fact on cogent evidence that was led before the trial court that Smt. Hira Devi never

suffered a decree in favour of the defendants and, in fact, somebody else was brought to sign the written statement as also the statement given in

court. The pertinent question that requires to be decided is as whether the decree of the kind obtained by the defendants is void or voidable. I am

of the considered view that such a decree is wholly void, ineffective and inoperative. Obviously, the judgment and decree was not in rem but was a

judgment in personam. Not being a judgment in rem, it could not bind the whole world but has binding only on the parties. Can Smt. Hira Devi be

termed to be a party to the suit that resulted into a decree dated 4th March, 1972, in favour of the defendants? In my view, she would not be

termed to be a party either to the suit or the decree at all. If no judgment/ decree at all was passed against her, there was absolutely no necessity

for her to have the same set aside and if she could get possession on the basis of title within 12 years as per Article 65 of the Limitation Act, the

same would be true also with regard to the appellant Punjab Singh. If a person who is not a party, the order judgment passed against him in the

eye of law is ineffective and non est and as such, the said person is under no obligation to take proceedings to get it set aside. A full Bench of this

Court in State of Haryana v. Vinod Kumar 1986 PLJ 161 clearly held that a person who is not a party would have no right to get the orders set

aside or get it declared void and the same would be binding on the person who is a party or named therein and his remedy would be only to get a

declaration that the order was ineffective and non est as far as he is concerned. Although Smt. Hira Devi was named in the suit resulting into decree

dated 4th March, 1972, but in the peculiar facts and circumstances she cannot be termed to be either a party or named in the suit when it is proved

by overwhelming evidence on record that he neither filed any written statement nor made any statement before the court and, in fact, somebody

else was brought in her place to suffer the decree. In somewhat similar circumstances, D.V. Sehgal, in Soran Gir v. Manjit Singh and Ors. 1987

PLJ 409 held that it was not necessary for the respondent of the said case to have the decree set aside before he could maintain his relief for

possession of the suit land which he had purchased from its real owner. Learned Counsel appearing for the respondents, however, on the basis of

judgments reported as Ekawari and Others Vs. Jadunandan Kamat and Others, and State of Punjab v. Gurdev Singh Judgments Today, 1991(3)

S.C. 465 endeavoured to persuade me to hold the contrary. However, I find no substance in the contention raised for the reason that the

judgments cited by learned Counsel are distinguishable. In so far as Gurdev Singh's case (supra) is concerned, Hon"ble Supreme Court of India

was dealing with a case where an order of dismissal from service was passed against a particular person and when the same was set aside by the

High Court on the ground that the order being against the rules did not require to be specifically set aside and there was no limitation involved to

successfully maintain the suit. It is clear from the facts of the aforesaid case that an order of dismissal from service was passed against a particular

person and, therefore, he had necessarily to ask for setting aside the same. The apex court clearly held that if an act is void or ultra vires it is

enough for the court to declare it so and it collapses automatically and need not be set aside. The aggrieved party can simply seek a declaration

that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not quash so as to produce a new state

of affairs. But nonetheless the impugned dismissal order has atleast a de facto operation unless and until it is declared to be void or nullity by a

competent body or court. Obviously, the order of dismissal from service is against a particular person but the facts of the present case go to show

that the decree was not passed against Smt. Hira Devi. In so far as Ekawari's case (supra) is concerned, it may only be observed that the persons

challenging the judgment/decreed in the said case was admittedly a party and the only contention raised by them was that the decree was obtained

by fraud inasmuch as the process of proceedings was alleged to have been suppressed. It is pertinent to mention here that the aforesaid case was

also cited before D.V. Sehgal, J. in Soran Gir's case (supra) but the same was not followed. For the reasons stated above I hold that Punjab

Singh was well within his rights to file the present suit within 12 years from the date Smt. Hira Devi was dispossessed. It is an admitted position that

the parties had joint possession being co-sharers and, therefore, till the time partition takes place no one can claim to be in exclusive possession but

even if the defendants had taken possession of the share represented by Smt. Hira Devi, even then the suit being within 12 years was within

limitation.

7. Before I part with this judgment it requires to be mentioned that the first appellate court reversed the finding of the trial court on the question of

limitation by simply observing that incorporation of the names of the defendants in the Jamabandi for the year 1975-76 would be a sufficient notice

to all concerned that the defendants have obtained a decree. It is from the said date that terminus quo has been fixed. I somehow do not approve

of the approach of the learned Additional District Judge. Jamabandi is not such a document which may be of such a nature that can be considered

to be a notice to the public at large. The positive case of the plaintiff was that he came to know of the decree only after the demise of Smt. Hira

Devi and admittedly whereas Smt. Hira Devi died on 6th June 1980, Punjab Singh filed the suit on 5th September, 1980. The first appellate court

did not discuss any evidence nor even the statement of the appellant to find out as to whether the assertion was correct or not. It simply presumed

knowledge of the decree because mutation in pursuance of the decree obtained by the defendants was entered in the jamabandi for the year 1975-

76. In my considered view this was not the correct approach and for this reason as well the judgment of the first appellate court deserves to be set

aside.

8. For the reasons aforesaid, this appeal succeeds. The judgment and decree passed by the first appellate court is set aside and the one passed by

the trial court is restored. The parties are, however, left to bear their own costs.