

## Mithu Ram Vs Shiv Nath

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

**Date of Decision:** Feb. 8, 2011

**Citation:** (2011) 162 PLR 756 : (2011) 5 RCR(Civil) 666

**Hon'ble Judges:** L.N. Mittal, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

L.N. Mittal, J.

Plaintiff Mithu Ram having failed in both the courts below has filed the instant second appeal.

2. Plaintiff-Appellant and Defendant - Shiv Nath are real brothers. Case of the Plaintiff-Appellant is that he purchased land measuring 71 kanals 4

marlas in open auction out of unallotted evacuee property. Mutation in this regard was sanctioned in Plaintiff's favour on 16.3.1974. Defendant

had no source of income. The Plaintiff treated the Defendant as father figure. On Defendant's request, the Plaintiff agreed to lease out 35 kanals 12

marlas of land (half share) to the Defendant for 18 years. The Defendant regularly paid lease money to the Plaintiff. On expiry of lease period, the

Plaintiff demanded back possession of the suit land measuring 35 kanals 12 marlas. However, the Defendant started claiming ownership thereon

on the basis of consent decree dated 12.4.1985 passed in civil suit No. 353 of 1985, titled Shiv Nath v. Mithu Ram. Mutation No. 4079 had

already been sanctioned in favour of Defendant on the basis of the said decree. The Plaintiff in the suit challenged the aforesaid decree dated

12.4.1985 alleging that the Defendant had no antecedent rights in the suit land and the parties did not constitute Joint Hindu Family. The suit land

was purchased by Plaintiff exclusively and Defendant could not claim right therein on the basis of family settlement. The Plaintiff also sought

possession of the suit land.

3. The Defendant controverted the plaint allegations. The Defendant pleaded that suit land was purchased by both brothers and Defendant had

been contributing his half share at the time of payment of installments of the price thereof. However, Plaintiff by fraud got it allotted exclusively in

his own name. The Defendant on coming to know of the same stake claim over his half share in the total land and thereupon impugned consent

decree dated 12.4.1985 was passed. The said decree was suffered voluntarily by the Plaintiff herein. No fraud was played on the Plaintiff herein. It

was denied that the suit land was leased out to the Defendant by the Plaintiff. It was also denied that Defendant ever paid any lease money to the

Plaintiff. On the contrary, the Plaintiff out of his share sold 4 kanals land to Bhagwant Singh vide sale deed dated 13.6.1991 and sold the remaining

31 kanals 12 marlas land of his share to Fateh Chand etc. vide sale deed dated 16.4.1996. Now the Plaintiff is left with no share in the total land.

Various other pleas were also raised.

4. Learned Additional Civil Judge (Senior Division), Karnal vide judgment and decree dated 4.12.2007 dismissed suit with special costs. First

appeal preferred by the Plaintiff has been dismissed by learned Additional District Judge (Fast Track Court), Karnal vide judgment and decree

dated 12.8.2009. Feeling aggrieved, the Plaintiff has preferred the instant second appeal.

5. I have heard learned Counsel for the Appellant and perused the case file.

6. Learned Counsel for the Appellant vehemently contended that Defendant had no antecedent right in the suit land and therefore, he could not

become owner of the suit land by way of consent decree. It was also argued that the consent decree passed on alleged family settlement is result of

fraud as there could be no valid family settlement between the parties. It was also pleaded that the Plaintiff exclusively purchased the suit land.

7. I have carefully considered the aforesaid contentions but find no merit therein. Admittedly, parties are real brothers. The Defendant's case is that

the property was jointly purchased by both the brothers and the Defendant contributed half share of the price of the suit land but the Plaintiff got it

allotted in his own name exclusively. Consequently, there was family settlement between the parties leading to impugned consent decree dated

12.4.1985. Facts leading to the aforesaid consent decree cannot be adjudicated upon again in the instant subsequent suit. Consequently, consent

decree cannot be said to be based on fraud on the ground that there could be no valid family settlement. The question of family settlement stands

concluded by said consent decree dated 12.4.1985. The Plaintiff has not pleaded any other fraud in the passing of consent decree dated

12.4.1985. On the contrary, cogent evidence has been led by the Defendant herein to depict that the Plaintiff voluntarily suffered the said consent

decree. There is, therefore, no ground to set aside the consent decree. There could be valid family settlement between the parties who are real

brothers. Consent decree suffered on the basis of any such family settlement did not require compulsory registration.

8. There is also no document on record to depict that the Plaintiff leased out the suit land to Defendant for 18 years as pleaded by the Plaintiff. On

the contrary, there could be no oral lease for 18 years. Admittedly, there is no registered lease deed to substantiate the aforesaid claim of the

Plaintiff. Thus, the entire version of the Plaintiff is based on false plea. Moreover, the Plaintiff also did not allege as to when the alleged lease was

granted by him in favour of Defendant. There is also no cogent evidence to depict payment of any lease money by Defendant to Plaintiff.

9. The aforesaid claim of the Plaintiff is also falsified by another significant circumstance. The Plaintiff sold 4 kanals land out of his share vide

registered sale deed dated 25.6.1991 Ex. D1 to Bhagwant Singh. The Plaintiff conceded in his cross-examination that while executing the said sale

deed, he had perused the revenue record. Mutation on the basis of consent decree dated 12.4.1985 had already been sanctioned. Consequently,

revenue record reflected Defendant to be owner of half share of the total land. It is, thus, manifest that in June, 1991 while executing sale deed, the

Plaintiff became aware of the consent decree dated 12.4.1985 as reflected in the revenue record but in spite thereof, the Plaintiff filed the instant

suit on 18.11.2004 i.e. more than 13 years thereafter. Consequently, the plea of the Plaintiff regarding alleged lease is completely falsified. The suit

is also hopelessly barred by limitation. Consent decree was passed on 12.4.1985. The same is proved to have been suffered by Plaintiff herein

voluntarily. Consequently, limitation period to challenge the consent decree started immediately when the decree was passed. However, even if the

limitation period is counted from the date of knowledge of the Plaintiff, the Plaintiff learnt of the same at least in June, 1991 as noticed hereinbefore.

Even then, the suit is hopelessly barred by limitation having been instituted more than 13 years thereafter.

10. From the aforesaid discussion, it emerges that the Plaintiff Appellant has failed to substantiate his claim on merits and the suit is also barred by

limitation. Concurrent finding by both the courts below nonsuited the Plaintiff is fully justified by evidence on record and supported by cogent

reasons. The said finding is not shown to be perverse or illegal in any manner so as to call for interference in second appeal. On the contrary, claim

of the Plaintiff is based on falsehood and dishonesty only. No question of law much less substantial question of law arises for determination in the

instant second appeal. The appeal is completely frivolous and devoid of merit and is accordingly dismissed in limine.