SANTOSH

*v.*

JAGAT RAM & ANR.

(Civil Appeal No. 1881 of 2008)

FEBRUARY 8, 2010

**[V.S. SIRPURKAR AND SURINDER SINGH NIJJAR, JJ.]**

*Suit – By widow, for declaration of her ownership in possession, of suit land, left behind by her deceased husband – Plaintiff alleging that her earlier consent decree in favour of the defendants was the result of a fraud – Defendants denying the allegation and taking the plea that the suit was time-barred – Suit decreed – Decree set aside by first appellate court – Second appeal dismissed in limine – On appeal, Held: Facts of the case prove that the consent decree was result of fraud, hence a nullity – The suit is also not barred by time – Limitation.*

**Appellant filed the present suit in the year 1990, for declaration to the effect that she was the owner in possession of the land, left behind by her deceased husband; and that the decree dated 26.3.1985 shown to have been suffered by her in favour of the respondents-defendants was illegal, bad and was a result of fraud. Respondents-defendants contested the suit stating that there was no question of fraud; and that the said decree was passed as per the family settlement. They also pleaded that the suit was barred by limitation. The Trial Court while decreeing the suit, returned a finding that the decree dated 26.3.1985 was a result of a fraud. The first appellate court allowed the appeal holding that there was no fraud and the consent decree dated 26.3.1985 was a good and a valid decree. The first appellate court also held that the suit was barred by time. Second Appeal was**

A dismissed in limine by the High Court.

The questions for consideration in this appeal were whether a fraud was played against the appellant for obtaining the decree dated 26.3.1985; and whether the second suit filed by the appellant was within limitation.

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Allowing the appeal, the Court

HELD: 1.1. The Trial Court, after correctly framing the issues, took the stock of all the four witnesses, namely, C Record Keeper (DW-1), Bailiff (DW-2), Advocate (DW-3) and father of the respondents-defendants (DW-4). The Court answered the issues in favour of the appellant, as regards (i) Ownership and joint possession of the suit land of the plaintiff. (ii) The decree dated 26.3.1985 being D nullity. (iii) Recording the mutation being illegal and not binding on the rights of the plaintiff. [Para 9] [438-C-E]

1.2. Taking stock of the evidence, the trial court took note of the improved version on the part of DW-4 that the father of the appellant had demanded Rs.20,000/- and had E then agreed to give share of the deceased to the respondents-defendants and that the said amount was paid through cousin of DW-4. The trial court rightly noted that this was not only an improvement, but the person, through whom the amount was given, was never F examined. The trial court also referred to the admission by DW-4 that no money was ever given to the appellant for household expenses and that she had no source to maintain herself. From this, the trial court correctly deduced that the person who is not having any source G to maintain himself/herself, could not part with his/her landed property as well in the manner that the appellant did. [Para 9] [438-F-H; 439-A]

1.3. The trial court noted the admissions by Advocate H (DW-3) to the effect that he and the appellant's advocate,

in the earlier suit and for the respondents-defendants in the present suit before the trial court, used to sit on the same seat and were the partners in the same profession having a common clerk. The trial court also noted the arguments on the side of the respondents to the effect that DW-4 was looking after the appellant and that the appellant had filed a Written Statement in the first case, the contents of which were well known to her and that she admitted the same as correct, as asserted by DW-3, in his evidence. [Para 9] [439-A-C]

1.4. The trial court also noted the facts about the Caveat having been filed by the respondents, the reply to which was filed by the appellant-plaintiff, wherein she had averred that she had voluntarily suffered the impugned judgment and decree and that she did not challenge the same. The trial court rightly found the story of payment of Rs.20,000/- to be a myth, since it was nowhere stated in the pleadings also. Further, the trial court also noted that the appellant, who was an issueless widow and an illiterate lady, was not at all being supported by DW-4 and DW-4 being her elder brother-in-law, was in a position to dominate and take advantage of her ignorance and illiteracy. The trial court also inferred correctly from the fact that a Caveat was filed in the year 1985 itself and the appellant was again paraded to make a statement that she did not intend to challenge the decree. [Para 9] [439-D-F]

1.5. There are number of material facts in the evidence, which have been ignored by the appellate court. The basic fact which has been ignored by the appellate court is that in the earlier Civil Suit No. 253 of 1985, the plaint was filed on that day, Written Statement was also filed on the same day, the evidence of the plaintiffs and the defendant was also recorded on the same day and the judgment was also made ready

A alongwith a decree on the same day. This, by itself, was sufficient to raise serious doubts in the mind of the courts. Instead, the appellate court went on to believe the evidence of DW-1, the Record Keeper, who produced the files of the summons. [Para10] [440-A-C]

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1.6. An impossible inference was drawn by the appellate court that the appellant was telling a blatant lie when she asserted that she did not voluntarily suffer a decree. The appellate court has also mentioned about the File No. 5 dated 30.9.1985, which would be hardly C about six months after the decree passed on 26.3.1985, which pertain to the Caveat filed u/s. 148-A CPC. Appellant was again brought to the court in pursuance of the so-called summons served on her through Bailiff in the proceedings u/s. 148-A CPC and her statement was also D got recorded. It is not known as to how a Caveat application was got registered and a summons was sent on the basis of a Caveat application, treating it to be an independent proceedings. Such is not the scope of a Caveat u/s. 148-A CPC. [Para 10] [440-E-H; 441-A]

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1.7. This was nothing, but a very poor attempt to get the fate of the appellant sealed by getting her statement recorded. Instead of drawing the correct inferences, the appellate court went on to record the impossible findings. F The High Court passed a very casual judgment without being bothered about these glaring facts. [Paras10 and 11] [411-C-D-A]

2.1. As regards the question of limitation, the trial court noted that the cause of action arose when G respondents started interfering with ownership and possession of the appellant-plaintiff over the suit land about two and half months before filing of the second suit and started asserting about having a decree in their favour in respect of the suit land. [Para 9] [439-G-H]

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**2.2. A fraud puts an end to everything. Such decree is nothing, but a nullity. It has come in the evidence that when the respondents started disturbing the possession of the appellant and also started bragging about a decree having been obtained by them, the appellant chose to file a suit. In that view, her suit filed in 1990 would be absolutely within time. The casual observation made by the High Court that her suit would be barred by limitation, is also wholly incorrect. [Para 12] [442-D]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1881 of 2008.

From the Judgment & Order dated 21.2.2006 of the High Court of Punjab and Haryana at Chandigarhin R.S.A.No. 3837 of 2001.

V.C. Mahajan, C.V. Subba Rao for the Appellant.

T.S. Ahuja and Ajit Kumar Pande for the Respondents.

The Judgment of the Court was delivered by

**V.S. SIRPURKAR, J.** 1. This is an appeal by a helpless widow, who has become a prey of the greed of her own elder brother in law and is deprived of her properties in a fraudulent manner. As per the pleadings, Smt. Santosh (appellant herein), the original plaintiff, lost her husband Chander Pal in the year 1985. She is issueless. Chander Pal, at the time of his death, owned a land to the extent of 36 kanals 7 marlas out of the total land measuring 80 kanals 1 marla comprised in khewat No. 64 khatoni No. 96 and 97 as per Jamabandi for the year 1975-76 situated at Village Kotia, Tehsil and District Mahendragarh. After losing her husband in the prime of youth, she had nobody to look forward to. Respondents are the sons of one Daya Ram, who was the real brother of Chander Pal. Appellant was approached by Daya Ram (DW-4), who convinced her to accompany him to Courts of Mahendragarh, so that the mutation

A of the properties inherited by her from her husband could be made and the properties could be recorded in her name. Believing him, she accompanied him to Mahendragarh, where her thumb impressions were obtained on 3-4 papers. She was also asked to say 'yes' if she was asked any question by the B authorities. She believed in good faith that the mutation will be done and the properties would be recorded in her name. All this happened on 26.3.1985. About two and half months, before filing of second suit the respondents (original defendants) and her brother in law Daya Ram (DW-4) started interfering with her C possession and insisted that there was a decree passed in their favour in respect of her lands. She, therefore, filed the present suit for declaration to the effect that she was owner in possession of the land in respect of the properties mentioned above and the so-called decree dated 26.3.1985 shown to have D been suffered by her in favour of the respondents-defendants is illegal, bad and was a result of fraud and, therefore, not binding upon her at all.

2. The suit was contested by the respondents-defendants. They claimed that the decree in question was legal and there E was no question of fraud and that in fact, the said decree was as per the family settlement. They also pleaded that the suit was barred by limitation and as such, the suit was liable to be dismissed. The evidence was led on behalf of the appellant-plaintiff in support of her plea, wherein she examined herself, F while on behalf of the respondents-defendants, four witnesses were examined including one Dharam Singh (DW-1), Record Keeper, one Ram Singh (DW-2), Bailiff, one S.K. Joshi (DW-3), Advocate and Daya Ram (DW-4) himself. The Trial Court accepted the evidence of the appellant-plaintiff and disbelieved G the witnesses examined on behalf of the respondents-defendants and while decreeing the suit, returned a finding that the decree dated 26.3.1985 was a result of a fraud.

3. An appeal came to be filed by the respondents-

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defendants against the above order, which was allowed. The Appellate Court came to the conclusion that there was no fraud played and the consent decree dated 26.3.1985 was a good and a valid decree. The Appellate Court also held that the suit filed by the appellant-plaintiff was barred by time.

4. The appellant-plaintiff filed a Second Appeal before the High Court, which was dismissed in limine. This is how the appeal has come before us.

5. Shri V.C. Mahajan, Learned Senior Counsel appearing on behalf of the appellant, firstly pointed out that the judgment by the High Court in the Second Appeal was a classic example of non-application of mind. He pointed out that the consent decree dated 26.3.1985 was a classic example of fraud. The Learned Senior Counsel, in support of his plea, pointed out that the plaint is dated 26.3.1985; It is filed on 26.3.1985; The Written Statement filed by the appellant is also dated 26.3.1985; The appellant was examined on 26.3.1985 and the decree was also passed on 26.3.1985. The Learned Senior Counsel wondered as to how all this could have happened on one and the same day. He pointed out that there was no question of the appellant being summoned by the Court or she remaining present in pursuance of those summons. The Learned Senior Counsel took us through the plaint in that suit, which was registered as Civil Suit No. 253 of 1985. According to the Learned Senior Counsel, as if all this was not sufficient, later on, an application was filed, purporting to be an application under Section 148-A of the Code of Civil Procedure (CPC) on 30.9.1985. This application was filed with the signatures of the same Advocate S.K. Joshi, who had appeared on behalf of the appellant in the earlier proceedings and had filed a Written Statement of consent. It is then pointed out by the Learned Senior Counsel that a notice was issued by the Court of Sub-Judge, First Class to the appellant and was served through a bailiff and in pursuance of that notice, she came and gave a statement before the Court on 23.11.1985

A that she did not intend to file a suit, challenging the consent decree. The Learned Senior Counsel then pointed out that there was no question of any proceedings being instituted on the basis of a so-called caveat under Section 148-A of the CPC nor was there any question of the Court issuing any notice on
B the basis of a caveat. He also pointed out further that all this was nothing but a towering fraud played upon the appellant. He pointed out that it is throughout the case of the appellant that she never appeared before any Court nor did she depose before the Court and that she is an illiterate lady knowing
C nothing about the intricacies of law and the procedures of the Court. The Learned Senior Counsel further argued that though the suit was rightly decreed by the Trial Court holding that the earlier decree obtained in the year 1985 was a fraud upon the appellant, the Appellate Court has, in a most casual manner,
D allowed the appeal filed by the respondents-defendants and chose to believe the evidence of the lawyer, which also was a classic example of non-application of mind on the part of the Appellate Court. Learned Senior Counsel further argued that as if all this was not sufficient, the High Court, in a most casual manner, has chosen to dismiss such Second Appeal, involving
E the substantial questions of law, in limine without even considering the same. From this, the Learned Senior Counsel argued that the respondents herein have succeeded in perpetrating their fraud against the appellant.

F 6. The argument was opposed by Shri T.S. Ahuja, Learned Counsel, appearing on behalf of the respondents on the ground that the case of the respondents was well supported by the fact that the lawyer Shri S.K. Joshi had stepped into the witness box in the subsequent suit and had reiterated that the
G appellant had consented and instructed him and it was only as per the instructions of the appellant that he had prepared her Written Statement in the first suit. The Learned Counsel also pointed out that Shri Joshi (DW-3) also reiterated about the appellant's statement made in the caveat proceedings. The
H Learned Counsel further argued that even Shri R.S. Yadav,

Advocate, who appeared in the Trial Court for the appellant herein, offered himself as a witness by way of additional evidence and he had stated that the Criminal Petition No. 7-4 dated 28.9.1994 under Section 125 of the Criminal Procedure Code (Cr.P.C.), which was decided on 12.8.2000 was drafted as per the instructions given by the appellant Santosh and that the appellant had put her thumb impression on this petition which was Exhibit AX. From this, the Learned Senior Counsel claimed that even on 28.9.1994, the land was not in possession of the appellant Santosh and, therefore, the story of the appellant that she came to the Court when her possession was being disturbed, is a myth and as such, the second suit was obviously barred by time. The Learned Counsel further reiterated that this was correctly appreciated by the Appellate Court and the High Court and they were correct in dismissing the suit as barred by time. He also pointed out that during the pendency of the appeal before the Appellate Court, the respondent No. 1 had filed an application under Order 6 Rule 17 CPC for amendment, pointing out that after the first decree in Civil Suit No. 253 of 1985, the respondents-defendants had constructed a pucca well and also installed a pumping set and obtained electric connection from the Electricity Board and the appellant Santosh did not object to the same. The Learned Counsel fairly admitted that this application was, however, dismissed by the Additional District Judge.

7. The basic questions in this appeal would be as follows:-

(i) Whether a fraud was played against the appellant herein for obtaining the decree in Civil Suit No. 253 of 1985?

(ii) Whether the second suit filed by the appellant was within limitation?

8. We have very carefully perused the records of the Courts below since the judgment of the High Court is laconic. Beyond mentioning the facts on the basis of the pleadings, there is nothing in the judgment. It seems to have been passed on the

A incorrect basis of the absence of substantial question of law. Again the High Court has given a one-line finding that the suit filed by the appellant was beyond the period of limitation, since it was filed in the year 1990, seeking to set aside the decree passed in the year 1985. Ordinarily, we would have remanded
B this matter back to the High Court. However, considering the time taken so far in finalizing the rights of the parties, we proceed to decide this appeal on merits.

9. The Trial Court, after correctly framing the issues, took the stock of all the four witnesses, namely, Dharam Singh (DW-
C 1), Record Keeper, Ram Singh (DW-2), Bailiff, S.K. Joshi (DW-3), Advocate and Daya Ram, the father of the respondents-defendants. The Court answered the first three issues in favour of the present appellant. Those issues pertain to:-

D (i) Ownership and joint possession of the suit land of the plaintiff?

(ii) The decree passed on 26.3.1985 in Civil Suit No. 253 of 1985 being nullity.

E (iii) Recording the mutation No. 1093 dated 6.11.1985 being illegal and not binding on the rights of the plaintiff?

Taking stock of the evidence, the Trial Court took note of
F the improved version on the part of Daya Ram (DW-4) that the father of the appellant had demanded Rs.20,000/- and had then agreed to give share of Chander Pal to the respondents-defendants and that the said amount was paid through one Mam Chand, cousin brother of Daya Ram (DW-4). The Trial
G Court rightly noted that this was not only an improvement, but said Mam Chand, through whom the amount was given, was never examined. The Trial Court also referred to the admission by Daya Ram (DW-4) that no money was ever given to the appellant for household expenses and that she had no source
H to maintain herself. From this, the Trial Court correctly deduced

that the person who is not having any source to maintain himself/herself, could not part with his/her landed property as well in the manner that the appellant did. The admissions by S.K. Joshi (DW-3), Advocate to the effect that he and Shri K.L. Yadav, Advocate, who appeared for the appellant in the earlier suit and for the respondents-defendants in the present suit before the Trial Court, used to sit on the same seat and were the partners in the same profession having a common Clerk. The Trial Court also noted the arguments on the side of the respondents to the effect that Daya Ram (DW-4) was looking after the appellant and that the appellant had filed a Written Statement in the first case, the contents of which were well known to her and that she admitted the same as correct, as asserted by S.K. Joshi (DW-3), Advocate, in his evidence. Furthermore, the Trial Court also noted the facts about the Caveat having been filed by the respondents herein, the reply to which was filed by the appellant-plaintiff vide Exhibit DW3/D, wherein she had averred that she had voluntarily suffered the impugned judgment and decree and that she did not challenge the same. The Trial Court rightly found the story of payment of Rs.20,000/- to be a myth, since it was nowhere stated in the pleadings also. Further, the Trial Court also noted that the appellant, who was an issueless widow and an illiterate lady, was not at all being supported by Daya Ram and Daya Ram being her elder brother in law, was in a position to dominate and take advantage of her ignorance and illiteracy. The Trial Court also inferred correctly from the fact that a Caveat was filed in the year 1985 itself and the appellant was again paraded to make a statement that she did not intend to challenge the decree. As regards the question of limitation, the Trial Court noted that the cause of action arose when respondents started interfering with ownership and possession of the appellant-plaintiff over the suit land about two and half months before filing of the second suit and started asserting about there having a decree in their favour in respect of the suit land.

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A 10. As against this, when we see the judgment of the Appellate Court, there are number of material facts in the evidence, which have been ignored by the Appellate Court. The basic fact which has been ignored by the Appellate Court is that in the earlier Civil Suit No. 253 of 1985, the plaint was filed B on that day, Written Statement was also filed on the same day, the evidence of the plaintiffs and the defendant (appellant herein) was also recorded on the same day and the judgment was also made ready alongwith a decree on the same day. This, by itself, was sufficient to raise serious doubts in the mind of C the Courts. Instead, the Appellate Court went on to believe the evidence of Dharam Singh (DW-1), Record Keeper, who produced the files of the summons. One wonders as to when was the suit filed and when did the Court issue a summons and how is it that on the same day, the Written Statement was also D ready, duly drafted by the other side lawyer S.K. Joshi (DW-3). Significantly enough, the Appellate Court has also relied on the evidence of S.K. Joshi (DW-3), who deposed about the appellant having come to him and instructed him to prepare the Written Statement (Exhibit DW3/A). In his evidence, S.K. Joshi (DW-3) has admitted specifically that there was a common E clerk between him and the counsel for the plaintiff in the earlier suit and they used to sit on the same Takhat (seat). An impossible inference was drawn by the Appellate Court that the appellant was telling a blatant lie when she asserted that she did not voluntarily suffer a decree. The Appellate Court has also F mentioned about the File No. 5 dated 30.9.1985, which would be hardly about six months after the said decree passed on 26.3.1985, which pertain to the Caveat filed under Section 148-A of the CPC. We put a specific question Shri Ahuja, Learned Counsel, appearing on behalf of the respondents, as to whether G in Haryana, on the basis of Caveats, could summons be issued by the Civil Courts, so as to be served on the other side through a Bailiff of the Court. The Learned Counsel was unable to support any such proceeding. As if all that was not sufficient, appellant was again brought to the Court in pursuance of the H so-called summons served on her through Bailiff in the

proceedings under Section 148-A of the CPC and her statement was also got recorded. It is not known as to how a Caveat application was got registered and a summons was sent on the basis of a Caveat application, treating it to be an independent proceedings. Such is not the scope of a Caveat under Section 148-A of the CPC. At least Shri Ahuja, Learned Counsel, appearing on behalf of the respondents could not support such a finding and he fairly stated that he was unaware of any such procedure. Nothing has been shown to us in the nature of an order passed by the Court on the basis of the so-called Caveat. We are convinced that this was nothing, but a very poor attempt to get the fate of the appellant sealed by getting her statement recorded. Instead of drawing the correct inferences, the Appellate Court went on to record the impossible findings. The Appellate Court seems to have been more disturbed by the fact that the appellant had challenged the integrity of the counsel for the parties and asked a question as to why should the counsel for the respondent prepare a Written Statement against the wishes of the respondent. The Appellate Court went on to say:-

"Merely because both the counsel sit on the same bench and have a common clerk and that the suit was decided on the same day when it was present in the Court, it would not, by itself, prove that the judgment and decree were obtained by fraud and misrepresentation."

To say that 'we are surprised', would be an understatement. To support this perverse finding, the Appellate Court went on to record the findings regarding the Caveat and the statement of the appellant recorded in those proceedings (?). We are fully convinced that this was nothing, but a towering fraud played upon an illiterate and helpless widow, whose whole inherited property was tried to be grabbed by Daya Ram and/or the respondents herein.

11. Very unfortunately, all this has escaped the notice of

A the High Court, who passed a very casual judgment without being bothered about these glaring facts. We are of the firm opinion that a whole suit No. 253 of 1985, decree passed thereupon on 26.3.1985 and the subsequent Caveat proceedings were nothing but a systematic fraud. There cannot B be a better example of a fraudulent decree. We are anguished to see the attitude of the Court, who passed the decree on the basis of a plaint and a Written Statement, which were filed on the same day. We are also surprised at the observations made by the Appellate Court that such circumstance could not, by C itself, prove the fraudulent nature of the decree.

12. A fraud puts an end to everything. It is a settled position in law that such decree is nothing, but a nullity. It has come in the evidence that when the respondents herein started disturbing the possession of the appellant and also started D bragging about a decree having been obtained by them, the appellant chose to file a suit. In that view, her suit filed in 1990 would be absolutely within time. The casual observation made by the High Court that her suit would be barred by limitation, is also wholly incorrect.

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13. On the basis of the conclusions that we have reached above, we proceed to set aside the judgment of the High Court, as well as of the Appellate Court and restore the judgment of the Trial Court. The appeal is allowed with the costs estimated F at Rs.25,000/-.

K.K.T. Appeal allowed.