

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.6348 of 2014 (O&M)

Date of decision:29.05.2015

Ram Gopal and another

.... Petitioners

versus

Tejvir and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Yash Paul Khullar, Advocate,
for the petitioners.

Mr. John Kumar, Advocate,
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. The revision is brought against the orders of the two courts below dismissing the plaintiffs' application for injunction. The plaintiffs were seeking to assail a decree obtained by the defendant against the plaintiffs and others and their predecessors where the status of the plaintiffs' mother Sukhia as the wife of Gulzari was put at issue. The contentions of the defendant in her capacity as plaintiff in the earlier proceedings were that Sukhia had been married to one Rajpal and after his death, she entered into a karewa form of marriage with Gulzari. The contest was entered

through Gulzari's daughter's son. It was found that Sukhia was the widow of Gulzari and obtained rights as canvassed by her in the suit.

2. The present suit is filed by the plaintiffs who were the defendants in the earlier suit to contend that Sukhia never married Gulzari and by information obtained through RTI, they have come to know that in the ration card, birth and death register and the voter card, her status is only referred to as the wife of Rajpal and in the ration card and the birth and death certificate, there has been tampering in the official records cutting the name of Rajpal and introducing the name of Gulzari. This fact had not been known to the plaintiffs when the earlier suit was decided. According to the plaintiffs, the earlier decrees are vitiated by practice of fraud and, therefore, the decree obtained by the defendant cannot be a basis to cause disturbance to the possession or allow for enforcement of the decree obtained already.

3. On the face of the documents, a decree cannot be assumed to be brought under fraud. A decree ought to be given a prima facie value of its correctness. If any person wants to assail such a decree and contends that the fraud in relation to the public document so permeated that the decree would also be rendered invalid, I would place the burden on them for proof of such a fraud to the hilt. Not even the fraud or any tampering would not make the difference but it must be shown that the plaintiff in the earlier suit

was herself instrumental in perpetrating the fraud and took the benefit by forging public records. Here again the entry in the public records have a prima facie value in the manner that the document stands and if it were to be contended that the public document was tampered with, the burden of proof shall again be on the plaintiff. In the absence of proof of fraud in the manner that would require to be established after full-fledged trial, it cannot give rise to a prima facie case in favour of the plaintiffs.

4. The suit on its face without proof of fraud would be clearly barred by *res judicata*. A person that seeks for interim relief as a plaintiff or defendant under Order 39 Rules 1 & 2 CPC must have a prima facie case. Prima facie the case is in favour of defendant and not in favour of the plaintiffs. The plaintiffs have to traverse a long distance before they can make possible any inference in court that the defendant or predecessor had been guilty of any such fraud. The relief of injunction could not have been granted in the suit where the plaintiffs had no prima facie case. The reliefs were correctly denied to the plaintiffs and the challenge to the same by means of a revision petition is vexatious. It is dismissed with costs of ₹3,500/- payable by the petitioners to the contesting respondents.

(K.KANNAN)
JUDGE

29.05.2015
sanjeev