

RSA No. 308 of 2003

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

RSA No. 308 of 2003

Date of Decision: December 09, 2015

Balbir Singh

.... Appellant-defendant

vs.

Jagdish Chand

.... Plaintiff/respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Ms. Harpreet Kaur Dhillon, Advocate for
for the appellant.

Mr. Sumit Mahajan, Sr. Advocate with
Mr. Anuj Balyan, Advocate
for the respondent.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

Impugned in the present Regular Second Appeal is the judgment and decree dated 22.11.2002 passed by learned District Judge, Ambala reversing the judgment and decree dated 25.02.2002 passed by learned Addl. Civil Judge (Sr. Divn.) Ambala, by decreeing the suit of the plaintiff-appellant to the effect that the decree dated

25.07.1994 and amended on 23.11.1995 passed in civil suit No. 296 dated 16.07.1994 is void and not binding upon the interest of the plaintiff is the suit land. However, the share of the plaintiff in the suit land will be determined afresh treating that Smt. Bachni Devi had died intestate.

The admitted facts of the case are that Bachni Devi mother of the parties was the absolute owner of the property. It is also not disputed before this Court that said property was succeeded by her from her father Chet Ram and therefore it was her self acquired property. Bachni Devi suffered a consent decree in favour of the defendant on 25.07.1994 whereby, the entire property was transferred to defendant Balbir Singh. Bachni Devi later on expired on 17.08.1995. The father of the plaintiff also expired later on 27.08.1998. Plaintiff had sought the joint possession of the suit land along with his brother on the ground that said judgment and decree is illegal and procured by fraud and it was not registered in accordance with law and therefore not binding upon him. It is to be added here that Bachni Devi had two daughters also, who are not party in the suit. The lower Court returned the findings that no fraud was committed in procuring in the decree. It was held that Bachni Devi herself appeared before the Court and suffered the decree, therefore, same was upheld. Consequently, suit filed by the plaintiff was dismissed leaving the parties to bear their own costs.

Aggrieved by said judgment plaintiff Jagdish Chand preferred an appeal. The learned District Judge came to the conclusion that though the decree was suffered by Bachni Devi and the impersonation is not proved, but the plaintiff did not have any pre-existing right in the said property, it being the self acquired property of Bachni Devi. Therefore, the consent decree required compulsory registration. Since the said decree was not registered, therefore, the same is not binding on the rights of the plaintiffs and was accordingly set aside. It was further ordered that the suit property will now revert to Bachni Devi and will devolve upon her legal heirs by way of natural succession.

Defendant is not satisfied with the said judgment and decree passed by learned District Judge, Ambala and preferred the present appeal.

I have heard learned counsel for the parties and have gone through the case file very carefully.

Undisputedly, it was proved before the lower Court that Bachni Devi had suffered a consent decree on 25.07.1994 in favour of defendant-appellant. It was also proved before the lower Court that Bachni Devi herself appeared and made a statement before the Court. The only question surviving before this Court is that as to whether the decree is not binding on the rights of the plaintiff on account of its non registration? I find the reply in affirmative. The

learned District Judge has referred to the case law on the point to hold that since the defendant-appellant did not have any pre-existing right, it being the self-acquired property of his mother Bachni Devi, therefore, the decree required compulsory registration. Reference was made to the authority of the Apex Court **Raj Kumar Vs. Ram Singh Major and others, 1995(3) R. R. R. 541: (1995) 5 SCC 709 .** The aforesaid judgment was later on followed by the Hon'ble Supreme Court in the case of **Phool Patti and another Vs. Ram Singh (Dead) through LRs, 2015(2) SCC (Civil) 248 : 2015(1)** .The said authority still hold good and has not been over ruled.

Since in this case it is proved that the disputed property which is the subject matter of the decree was self acquired property of Bachni Devi and defendant/appellant did not have any pre-existing right, therefore the decree required compulsory registration. Therefore for want of registration the decree does not create any right or title in favour of the defendant-appellant. Therefore, the findings of District Judge in this regard are affirmed.

The next question would arise that the parties had two sisters, who are not party to the suit and whether in their absence the suit of the plaintiff is liable to be dismissed?

After going through the judgment of learned District Judge I am of the view that no adverse order has been passed against the said two sisters. The learned District Judge has merely reopened the

succession of Bachni Devi by directing that the disputed property of Bachni Devi will go by way of natural succession. Therefore, the judgment in fact favours the sisters who will now get 1/4th share each. It being so, even if sisters are not party, the order being in their favour, the suit cannot be dismissed on this sole ground.

As a result of the aforesaid discussion, I do not find any force in the present appeal.

The same is accordingly dismissed.

December 09, 2015
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(KULDIP SINGH)
JUDGE