

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1185 of 2012 (O&M)

Date of Decision.03.09.2015

Om Parkash

.....Appellant

Versus

Amar Singh and another

.....Respondents

Present: Mr. Ajay Jain, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers 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?

-. -

K. KANNAN J. (ORAL)

1. The appeal is brought at the instance of the defendant who claimed in a Will executed by his paternal uncle Daya Ram in respect of share which he obtained from his father Prabhu. The plaintiff was filing a suit for a declaration of the property on the basis of a decree which had been obtained against Daya Ram and Ram Chander. Ram Chander was the 1st defendant in suit. 2nd defendant was Ram Chander's son. The 2nd defendant claimed under the Will referred to above.

2. The plaintiff's suit was on the basis of a decree in C.S. No.537 of 1998 where Ram Chander and Daya Ram were parties. The judgment filed as Ex.P1 recorded the fact that there had been a family arrangement amongst the sharers and the defendants Ram Chander and Daya Ram came present in Court and filed written statement admitting to such a family settlement in terms of which the plaintiff had been granted the right to the property in khasra No.168. However, the suit

was filed in respect of the property in khasra No.138 as having been obtained by him and the plaintiff was attempting to rely on an amendment of the decree that had been made in the year 2000 when 1st defendant was represented through counsel and the 2nd defendant had died at that time but the counsel appearing on behalf of the 2nd defendant himself stated that there was no objection and the amendment had been made. The plaintiff was relying on the amended decree referring to khasra No.138 and stated that in terms of the decree that he had obtained, he had got right to the property and the 2nd defendant was attempting to set up a Will from Daya Ram in respect of the same property and according to the plaintiff, the Will was not true and even if true, it cannot operate to create any transfer of interest in relation to property which Daya Ram had already suffered in the suit filed by the plaintiff. The Courts below held the Will to be true but however, accorded to the plaintiff a right to the property in the manner claimed by him on the basis of the decree.

3. The counsel appearing on behalf of the appellant points out to two important facts. One, the original decree that was passed was collusive and it cannot bind. If it was valid, it was only with reference to Khasra No.168 and an amendment which had been made subsequent to the death of Daya Ram cannot operate to bind the 2nd defendant who was the claiming under Will executed by Daya Ram.

4. I have gone through the judgment on the basis of which the decree was passed in the year 1998 against the 1st defendant and Daya Ram. The judgment reads that the plaintiff had sought for his claim to ownership on account of a family settlement brought with the

defendants and the defendants had also admitted to such a claim. If there was nothing wrong about family members bringing about a settlement in respect of property belonging to the father when the property falls to succession and such an arrangement, even if oral, was binding. If that arrangement was set forth by the plaintiff to lay a claim and the defendants would also concede to such an assumption and the plaintiff's right, they will be estopped from making any claim in respect of the very same property in subsequent proceedings. The 1st defendant and Daya Ram were, therefore, barred by estoppel from setting up a claim and to contend that it was collusive. Such a plea of collusion will not available when persons of full age and understanding in Court are represented through counsel and then suffered a decree on the basis of such admission. I will, therefore, discard the first leg of argument made by the counsel that the decree was collusive and it was not binding.

5. No doubt the decree was only with reference to khasra No.168 and if there had been an amendment in respect of the property in Khasra No.138, I asked the counsel whether khasra No.168 ever belonging to the family in respect of which such a suit had been filed. The counsel says that Khasra No.168 was not part of the property belonged to the family and only Khasra No.138 was and according to him, if there was a modification to be effected subsequent to the life time of Daya Ram, it cannot operate to bind him or his interest. I discard this argument also, for, if there was indeed a property which belonged to the family in khasra No.168, the modification of khasra number could not have been possible. If the property itself was not available, by the own showing of the defendant's contention, the

reference to khasra No.168 was a mistake for khasra No.138 and if such a contention had not been brought, he could have sought for such a prayer and obtained decree that khasra No.168 meant only khasra No.138 and the decree must be taken as with reference only to khasra No.138 and declaratory relief in respect of such property would still have been competent. If in this case, the plaintiff had also filed a suit and the first defendant had suffered a modification through a representation of counsel, it shall be binding on the 1st defendant for the reason that he was represented through the counsel and as far as the 2nd defendant's estate was concerned, it would be operative as the correct khasra number for which the decree had been passed. The reference to khasra No.168 was obviously a mistake and the present suit itself must be taken as making possible such a correction if it had not been sought for by means of an amendment in 2000. The validity of the decree by Daya Ram has no relevance at all in such a situation. Daya Ram has no right in the property for which he was making a bequest. The judgments passed by the Courts below contains no error and I find no scope for making an interference in the second appeal.

6. The second appeal is dismissed as involving no substantial question of law for consideration.

(K. KANNAN)
JUDGE

September 03, 2015
Pankaj*