

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

RSA No.1831 of 2012 (O&M)

Date of decision: 27.11.2015

Rajinder Pal

... Appellant

Vs.

Tilak Raj and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.S. Rai, Advocate
for the appellant.

Mr. Parminder Singh, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

Appellant-defendant is in Regular Second Appeal against the judgment and decree of the lower appellate Court whereby suit filed by the respondent-plaintiff claiming declaration has been decreed and mutation bearing No.8381 dated 11.05.2000 sanctioned by Assistant Collector-II Grade, Barara, Ambala in respect of the land bearing Khata No.2014, Khasra No.687/2 (0-13) has been set aside.

Mr. Rai, learned counsel appearing on behalf of the appellant submits that the trial Court on the basis of oral and documentary evidence dismissed the suit on the premise that declaration sought by the plaintiff on the basis of consent decree dated 02.12.1994 required registration. However the lower Appellate Court committed illegality and perversity in reversing the findings as the mutation with regard to 08 marla of land as per the judgment and decree dated 02.12.1994 was got effected on 11.05.2000 whereas Surjit Kaur, the

defendant in the abovementioned decree died on 24.04.1999. The mutation of aforementioned land was in respect of the entire land owned by Surjit Kaur i.e. 11 marlas in equal shares. The judgment and decree was not in the knowledge of the defendant, thus there was no occasion for the appellant-defendant to challenge the same. Thus, prays for setting aside the impugned judgment and decree as the substantial questions of law arise for determination by this Court.

Mr. Parminder Singh, learned counsel appearing on behalf of the respondents-plaintiff submits that the civil suit was instituted in the year 1994, it was specifically urged and pleaded that there was a family settlement and the factum of family settlement in the written statement was not denied by Surjit Kaur and till her lifetime. Thus there was pre-existing right in favour of the plaintiff and judgment and decree therefore did not require any registration.

I have heard learned counsel for the parties and appraised the paper book.

Be that as it may, the fact remains that Surjit Kaur was the absolute owner of the property after death of her husband and thereafter her death, the property devolved upon legal heirs in equal shares. In essence, all the children of Surjit Kaur and the siblings had the pre-existing right over the property. Since the family settlement set up in the plaint was not denied thus it created a pre-existing right in favour of the plaintiff therefore I am of the view that judgment and decree did not require registration. In essence, the ratio culled out in the judgment of the Hon'ble Supreme Court in **Bhoop Singh Vs. Ram Singh Major and others, AIR 1996 SC 196 (1)** would not be applicable.

Keeping in view the aforementioned facts, I am of the view that finding rendered by the lower appellate court do not suffer from illegality and perversity which is based upon the appreciation of oral and documentary

evidence, much less, no substantial question of law arises to be adjudicated by this Court. The same is upheld.

Accordingly, the appeal is dismissed.

[AMIT RAWAL]
JUDGE

27.11.2015
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