

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

**RSA No.5046 of 2012 (O&M)**

**Date of decision : 27.07.2015**

Punnu ...Appellant

versus

Sohan Lal ...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

**Present:** Mr. B.S.Dhillon, Advocate for the appellant.

Mr. Pritam Saini, Advocate for the respondent.

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**RITU BAHRI, J (Oral)**

The appellant/defendant has come up in regular second appeal against the judgment of reversal whereby the lower appellate Court set aside the judgment passed by the Addl. Civil Judge (Sr. Divn.), Kurukshetra and the suit of the plaintiff has been decreed.

Father of the plaintiff constituted a joint Hindu family and the plaintiff being a coparcener had a right by birth in the land owned by the joint Hindu family headed by Krishan as Karta and the land in dispute is measuring 5 kanals 13 marlas being 1/4<sup>th</sup> share of the total land measuring 22 kanals 11 marlas. The defendant had filed a civil suit No.398 of 1989 in the Court of Shri J.S.Sharma, the then Sub Judge 1<sup>st</sup> Class, Kurukshetra titled Punnu Vs. Krishan in respect of the suit land and the same was decreed on 17.07.1989 in his favour. Father of the plaintiff Krishan was not competent to transfer the whole land in favour of the defendant by excluding the plaintiff from the ancestral land. A fraud was committed on the plaintiff by the

defendant who was his elder brother. Defendant had been paying Batai of share of the plaintiff till Rabi 2004 but in the month of July/August 2004, he refused to make the payment and disclosed that he had become the owner of the whole land and a mutation had been incorporated in the revenue record, vide mutation No.635. The suit of the plaintiff was that no family settlement had ever been taken place as alleged in the civil suit No.398 of 1989. The trial Court dismissed the suit of the plaintiff and the lower appellate Court on appeal decreed the suit of the plaintiff and has given reasons for the same. In paragraph 12, the lower appellate Court had examined the document Ex.D6, affidavit of the plaintiff and agreement Ex.D7 alleged to be executed by the plaintiff. The stamp papers for these documents have been shown to be purchased on 01.06.1989 and these documents were subscribed and registered in the register of DW2 at Sr. No.213 on 01.06.1989. The plaint of the suit No.398 of 1989 was drafted on 07.06.1989 and written statement filed on behalf of Krishan but does not carry the name of the person who had put those thumb impressions and the impugned judgment Ex.D3 in civil Suit No.398 of 1989 was decided on 17.07.1989 by the Court of Sh. J.B.Sharma, the then Sub Judge 1<sup>st</sup> Class, Kurukshetra. The affidavit dated 01.06.1989 which was prior to the institution of the suit on 08.06.1989 had given the detail of the land by reference to the land which was given in civil suit No.398 of 1989 by his father to Punnu Ram, the brother of the present plaintiff. The plaintiff had received Rs.6500/- on that day without the

details of the civil suit has been given in Ex.D6 and D7 prior to the suit which was filed. The lower appellate Court returned a finding that this decree had been obtained by a fraud.

Counsel for the appellant has vehemently argued that the suit land had been mortgaged by the appellant and the mortgage had been redeemed. The plea of the mortgage had not been taken in the written statement. In the deposition of DW4 Gurmeet Singh reference of these mortgage deeds have been made. In the absence of any pleadings in the written statement merely on the oral deposition of Gurmeet Singh the mortgage deeds have rightly not been considered by the lower appellate Court, these mortgage deeds been considered as they were never executed. The lower appellate Court after going through the dates of the civil Court decree dated 17.07.1989 and the documents Ex.D6 and D7 which were prepared much before the filing of the suit and rightly came to the conclusion that the present appellant had made an attempt to play fraud with the plaintiff in getting decree by presenting the documents that a compromise had been taken and he had accepted an amount of Rs.6500/- and given the land in favour of the plaintiff. The consent decree had been rightly set aside and the suit of the plaintiff has been decreed. No substantial question of law arises for adjudication in this appeal.

Dismissed.

**27.07.2015**  
Vinay

**(RITU BAHRI)**  
**JUDGE**