

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Regular Second Appeal No.1137 of 2015(O&M)

Date of decision: 18.12.2015

Pawan Kumar

.....Appellant

versus

Smt.Pushpa Rani Bansal and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.N.S. Shekhawat, Advocate for the appellant

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 7.1.2015, passed by the learned District Judge, Narnaul, affirming the judgment and decree dated 30.7.2011, passed by the learned Civil Judge, Junior Division, Mahendergarh vide which the suit of the plaintiff for declaration was dismissed.

Pawan Kumar/ plaintiff had filed a suit stating that he is owner of the disputed shop on the basis of the judgment and decree dated 13.2.1990, passed in civil suit bearing No.102 of 1990 titled as *Indernarain v. Tirath Ram*. It is stated that earlier Tirath Ram son of Roshan Lal was its owner. Plaintiff has further challenged the judgment and decree dated 26.3.1994 passed in Civil Suit No.213 against the plaintiff and in favour of the defendants on the ground that

the same is fraudulent in nature and is based on mis-representation.

In the written statement, defendants claimed that the judgment and decree was correctly passed. The disputed shop was coparcenary property and the decree was suffered in furtherance of the family settlement.

I have heard learned counsel for the appellant and have also carefully gone through the file.

Both the Courts below have held that the plaintiff has failed to prove that the decree was fraudulently suffered by him. The perusal of the findings recorded by the Courts below show that the plaintiff had claimed that the husband of the defendant had taken him to lawyer and he signed some blank and printed papers. Before the lower Court, the counsel of the present plaintiff appeared to state that he had appeared for the present plaintiff who was defendant in the said case. He had also proved the power of attorney and written statement and the fact that the plaintiff had made a statement in the said case admitting the signatures of the plaintiff -defendant in the present case.

Learned counsel for the appellant has laid much emphasis upon the admission of the defendant in previous suit wherein he has stated that he was not personally known to the party. Normally a lawyer knows his party as a client though in some cases, there may be some personal relations also. Therefore, if counsel did not know the party personally, it hardly makes any difference. The fact is that the plaintiff admits that he has signed some papers before the counsel and the counsel had proved that the defendant had appeared

in the Court and made the statement. He has also signed the written statement and power of attorney. Therefore, such fraud is not proved.

The next contention of learned counsel for the appellant is that there can be no family settlement between the parties who happens to be wife of the real cousin of the plaintiff.

I am of the view that even if a family settlement takes place between the cousin, sometime party prefers to own the property in the name of the wife. Therefore, there is nothing unusual, if on account of some settlement, the property was transferred in the name of the defendant, who happens to be the wife of the real cousin of the plaintiff. There can be a family settlement between the cousin also who are not of distant relations. It also comes out that the decree was passed in the year 1994. Once it is proved that the respondent-plaintiff appeared in the said case and admitted the case, the present suit being filed in the year 2002 i.e. after eight years of the decree is apparently time barred.

Findings of facts have been recorded by both the Courts below. No substantial question of law arises.

Hence, the present appeal is dismissed.

18.12.2015
gk

(Kuldip Singh)
Judge