

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1461 of 2015 (O&M)

Date of Decision: October 20th, 2015

Dalbir Singh

...Appellant

Versus

Rajinder Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Whether Reporters of local papers may be allowed to see the judgment?

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr.Sushil Bhardwaj, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

The challenge in the present Regular Second Appeal is to the concurrent findings of fact and law, whereby the suit for declaration challenging the decree dated 31.7.1991, has been dismissed.

Mr.Sushil Bhardwaj, learned counsel appearing on behalf of the appellant-plaintiff submits that the judgment and decree had been obtained by fraud and misrepresentation. Moreover, it could not be acted upon, much less any mutation entered into for want of registration. In support of his submission, has relied upon the judgment rendered by this Court in **Regular Second Appeal No.830 of 2014 (Prem Nath Versus Subhash Chander and others,** decided on 17.9.2015. He further submits that the cause of action to file the suit arose in the year 2005 when mutation vis-a-vis aforementioned decree was effected on 30.10.2003, therefore, the suit could not have been dismissed for want of delay.

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

The decree, aforementioned, has been effected by the appellant-plaintiff in his full senses. For fourteen years, the appellant-plaintiff kept mum. Even he was aware of the decree inasmuch as that his signatures on the written statement have been proved. The provisions of Order 6 Rule 4 CPC have not been proved, which is essential requirement of law. The ratio decidendi culled out by the coordinate Bench of this Court in **Prem Nath's case (supra)**, would not apply to the facts and circumstances of this case as it is not discernible as to when the consent decree, which according to the plaintiff required registration, was assailed. In my view, the consent decree would require registration where the party, for the first time, created a right in the property. However, in the present case, the decree was effected in favour of the defendant, who is none else but the brother of the plaintiff. Both the brothers acquired respective share from their father. In essence, both of them had a pre-existing right and, therefore, the transferring of the share of the plaintiff in favour of the defendant, in my view, did not require any registration.

I do not intend to differ with the findings rendered by both the Courts below, much less no substantial question of law arises for determination by this Court.

The appeal is accordingly dismissed.

October 20th, 2015
ramesh

(AMIT RAWAL)
JUDGE