

In the High Court of Punjab and Haryana at Chandigarh

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C.M. No.9447-C of 2014 and
R.S.A. No.4064 of 2014 (O&M)

.....

Date of decision:23.3.2015

Balbir Singh

.....Appellant

v.

Sarwan Singh and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sunil Toni, Advocate for the appellant.

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Inderjit Singh, J.

C.M. No.9447-C of 2014:

For the reasons mentioned in the civil miscellaneous application, the delay of 26 days in filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

R.S.A. No.4064 of 2014 (O&M):

This regular second appeal has been filed by the appellant-plaintiff aggrieved against the impugned judgment and decree dated 28.3.2014 passed by the learned Additional District Judge, Ferozepur, affirming the impugned judgment and decree dated 27.9.2011 passed by the learned Civil Judge (Junior Division), Zira, whereby the civil suit filed by the plaintiff-appellant has been dismissed.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that Balbir Singh filed the civil suit against Sarwan Singh, Gurdit Singh and Sukhwinder Singh-defendants (respondents herein) for declaration that the compromise dated 19.7.2003 and the statement suffered by plaintiff on 19.7.2003 in the execution proceedings of case No.208-1 of 1986, “Balbir Singh v. Sarwan Singh etc.” and the order dated 19.7.2003 on the basis of alleged compromise and statement, passed by the learned Additional Civil Judge (Senior Division), Zira are illegal, null and void, against the principles of natural justice, not maintainable and are liable to be set aside and cancelled and the execution proceedings are liable to be restored to its original position, which was dismissed by the said Court on 19.7.2003, with a consequential relief of permanent injunction.

Learned counsel for the appellant at the time of arguments contested the concurrent findings of fact recorded by the Courts below by stating that Balbir Singh was of unsound mind and the compromise on his behalf and the statement given by him in the Court on 19.7.2003 and the order passed on the basis of compromise and statement of Balbir Singh-plaintiff are illegal, null and void.

A perusal of the record specially the judgments passed by the Courts below shows that Balbir Singh had executed the compromise and there is no denial of his signatures on the compromise. Similarly, he had given the statement in the execution proceedings on 19.7.2003 on the basis

of which, the lower Court passed the order and the execution was dismissed. To prove that the plaintiff was of unsound mind, no cogent evidence had been produced by the plaintiff as per the findings of the Courts below. The plaintiff remained contesting the proceedings from the year 1986 to 2003 himself without any next guardian. The compromise was executed on 19.7.2003. The statement was given by Balbir Singh in the executing Court. There is no observation of the Court at that time that he was not in sound disposing mind. Otherwise also, if Balbir Singh would have been of unsound mind, then it might have been noticed by the Court when his statement was recorded in the Court. Secondly, some documents have been placed on record without examining the earlier doctor. There is no case of the plaintiff in the plaint also that he was not of sound disposing mind from 1983 to 2003. Further from the appreciation of evidence, the learned Civil Judge (Junior Division) has held that in the year 2007 even Balbir Singh's father executed the power of attorney in favour of him and the plaintiff executed the sale deed being attorney of his father. If the plaintiff was of unsound mind, then as to why his father would have executed the power of attorney in his favour. It is also the findings of the learned Civil Judge (Junior Division) that the doctor, who undertook the treatment of the plaintiff at the relevant time, has not been examined. The compromise has been duly proved by the witness as well as the counsel for the plaintiff at the relevant time. The learned counsel for the appellant has not shown or argued as to what substantial question of law has arisen in this appeal. He has simply contested the findings of fact given by the Courts below. A

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perusal of the judgments of both the Courts below shows that the evidence has been properly appreciated and, in no way, the findings can be held as perverse nor there is anything to show the misreading of the evidence.

Therefore, from the record, I find that the findings of fact are given on correctly appreciating the evidence concurrently by the Courts below and no question of law, much less any substantial question of law arises in the present regular second appeal.

Nothing has been shown that the concurrent findings recorded by the learned Courts below suffer from any infirmity or are contrary to the record, which are correct and as per law. These do not require any interference from this Court and the same are upheld.

Finding no merit in the present regular second appeal, the same is dismissed.

March 23, 2015.

(Inderjit Singh)
Judge

hsp