

**Sr. No. 109
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

RSA No. 4470 of 2014(O&M)

Date of Decision 19.10.2015

Baljeet

...Appellant

Versus

LRs of Rajpal Nirmala Devi and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.S.Malik, Advocate,
for the appellant.

K.KANNAN J. (ORAL)

CM No. 10339-C of 2014

For the reasons stated in the application, delay of 15 days in re-filing the appeal is condoned.

Application stands disposed of.

RSA No. 4470 of 2014

The appeal is by the plaintiff who has suffered the relief for recovery of possession of property after setting aside the decree which was passed on 11.04.1990 obtained in favour of the first defendant through a compromise decree obtained against the second defendant Chandan Singh. The suit came to be instituted 10 years later by the plaintiff who was grandson of Chandan Singh through Chandan Singh's pre-deceased daughter Munni Devi. The contention was that Chandan Singh was prevailed to accept to a compromise which was fraudulent and hence not binding on the plaintiff. At the trial, the plaintiff wanted to give evidence of the

fact that the properties were ancestral in character and that he had a right to the property. According to him, compromise made was fraudulent and the recitals in the compromise itself contained a reference that Chandan Singh did not have any issue when actually the plaintiff's mother Munni Devi was Chandan Singh's daughter. The first defendant contended that plaintiff had no locus standi to file the suit and Chandan Singh was a willing party to a compromise where he had appeared in Court and admitted to the title of the first defendant. The defendant examined thumb impression expert who spoke from the comparison of the thumb impressions found in the disputed document, namely, memorandum of compromise filed in Court with the admitted thumb impressions and found the document to be genuine. The Court also observed that the plaintiff had not even given a basis for claim as to how he was entitled to the property and assail a decree suffered by the grandfather. The suit was dismissed and the Appellate Court also confirmed the appeal.

I find the second appeal is meritless for several reasons. (i) If the second defendant had suffered a compromise decree in the year 1990 and the only person that could assail the same could only be a party to the compromise and not a third party. (ii) If the plaintiff could set up title independently of Chandan Singh and if his contention was that the compromise will not bind him, there could have been scope for recovery, but if the plaintiff's claim itself was under Chandan Singh as a son of a predeceased daughter, the right could arise only after the lifetime

of Chandan Singh as a heir at law if Chandan Singh had left behind the property as available for distribution. If he had himself suffered a decree losing the right to the property, there was no question of plaintiff filing a suit. (iii) Son of pre-deceased daughter had no right by birth and such a plaintiff had no right to assail a compromise decree suffered by the grandfather, assuming for arguments sake that it was ancestral. The plaintiff had no locus standi to file a suit at that time to seek for recovery of possession. (iv) The suit itself could not have been levied during the lifetime of Chandan Singh. The claim was wholly illusory and a speculative suit came to be dismissed for appropriate reasons.

There is no merit in the second appeal. Second Appeal is dismissed.

19.10.2015

vandana

**(K. KANNAN)
JUDGE**