

RSA no. 3622 of 2006 (O&M) 1

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

RSA no. 3622 of 2006 (O&M)

Date of Decision :28.05.2016

Hukam Chand

....Appellant(s)

Versus

Smt. Kareshni Devi and others

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

- 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?

Present : Mr. Jagdish Manchanda, Advocate for the appellant

Mr.Sanjiv Gupta, Advocate for the respondents

MAHESH GROVER, J.

This appeal by the plaintiff is directed against the judgment of the learned Additional District Judge, Karnal dated 27.7.2006 reversing the findings recorded by the Civil Judge, Junior Division, Karnal in its order dated 28.7.2005.

The plaintiff filed a suit seeking declaration that the decree in civil suit no. 1258 of 1989 between Jai Singh and others vs. Mehar Chand is null and void having no effect upon his rights.

Mehar Chand s/o Manphool is the person who had suffered two decrees; one in favour of the appellant and the other which is disputed in the civil suit i.e decree passed in civil suit no. 1258 of 1989.

Mehar Chand was recorded as owner of the agricultural land,

the details of which has been given in the plaint. He is related to the plaintiff and the pedigree table records the degree of relationship. The plaintiff alleges a family settlement in which defendant no.5 gave his share to him alongwith possession to suffer a collusive decree in civil suit no. 983 of 1989 decided on 27.10.1989. When the plaintiff approached the revenue authorities to effect the mutation in his favour he was informed that mutation had already been sanctioned in favour of the present respondents on the basis of decree suffered by Mehar Chand on 28.11.1989 in a civil suit no. 1258 of 1989.

The appellant questions this decree to say that once Mehar Chand had alienated land through a valid decree in his favour on a prior date the subsequent one cannot survive since Mehar Chand was left with no interest in the property after he suffered a decree in favour of the appellant. Besides, this decree in favour of the appellant has never been challenged by any one and without it being set aside subsequent decree cannot confer any right in favour of the person when it already stood in favour of the appellant.

Trial Court accepted the challenge while appellate court reversed the same resulting in present appeal where at the time of motion hearing, following law points were framed:-

“i) Whether the judgment and decree dated 27.7.2006 passed by the Addl. District Judge, Karnal by reversing the well reasoned judgment passed by the learned Civil Judge, is illegal, wholly without jurisdiction and liable to be set aside?

ii) Whether the Civil Court decree which has been executed in favour of the present appellant dated

27.10.1989 can be set aside without challenging the same in any competent court of jurisdiction in the suit filed by the present appellant?

iii) Whether the written statement filed by the defendant No. 18- Mehar Chand can be relied without corroboration of evidence, as he didn't appear in the suit as a witness?

iv) Whether the respondent was having any title after 27.10.1989 over the land in dispute to execute the decree in favour of the respondents No. 1 to 17 as the decree has already been executed and title and possession of the property in question has already been handed over to the present appellant vide decree dated 27.10.1989?"

Learned counsel for the respondents states that there is no infirmity in the findings recorded by the learned Appellate Court and the same deserves to be affirmed.

In so far as the question of validity of the decree under challenge i.e Civil suit no. 1258 of 1989 is concerned there will be no hesitation to say that once the appellant had a decree in his favour on a prior date, Mehar Chand was left with no interest in the property unless he had resiled from his earlier stand and questioned the decree on pleas available to him such as fraud or undue influence in appropriate proceedings. He, therefore, could not have suffered another decree in favour of the present respondents subsequently. At no point of time, the decree in favour of the appellant had been challenged either on the basis of fraud or on the ground

seen from records that Mehar Chand did not appear as a witness to support the written statement filed by him in the subsequent suit and therefore, mere filing of written statement without any supportive material in the shape of the testimony of Mehar Chand could not have been relied on by the Courts and this casts a suspicion on the subsequent proceedings. Thus the fact remains that so long the appellant has a valid decree in his favour which has neither been questioned by Mehar Chand or anyone the subsequent decree has no validity in the eyes of law. Moreover, issues regarding compulsory registration of a family settlement etc. could have arisen only if there would have been a challenge by any of the stake holders of the decree. Hence, instant appeal is accepted and the impugned judgement dated 27.7.2006 passed by the learned Additional District Judge, Karnal is hereby set aside.

The questions of law at Sr.No.(ii), (iii) and (iv) are thus answered as above.

Appeal allowed.

(Mahesh Grover)
Judge

28.05.2016
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