

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

R.S.A. No.3686 of 2008 (O&M)

Date of decision: 21.01.2016

Simarjeet Kaur and ors.

...Appellants

Versus

Mohinder Singh (deceased through LRs) and anr.

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sanjiv Gupta, Advocate
for the appellants.

Mr. Satbir Singh Gill, Advocate
for the respondents.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 31.07.2008, passed by the learned Additional District Judge, Sirsa, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 08.10.2007, passed by the learned Additional Civil Judge, Sr. Divn., Sirsa, (for short, the 'trial Court'), has been

dismissed.

The respondents-plaintiffs filed a suit for declaration to the effect that the respondents are owners in possession in equal share of 1/32 share of land comprised in Sq. No.292 Killa No.10(8-0), 20/2(4-0) and land measuring 104 Kanals 00 marlas comprised in Khewat No.502, Khatoni No.650, Sq. No.257 Killa No.20(8-0), 21(8-0), Sq. No.258, Killa No.16(8-0), 17(8-0), 18(8-0), 23(8-0), 24(8-0), 25(8-0) Sq. No.291 Killa No.5(8-0), 6(8-0), 15(8-0) Sq.No.291 Killa No. 1(8-0), 11(8-0) as per jamabandi for the year 1995-96, situated in Village Kuttabadh, Tehsil Elenadbad, District Sirsa on the basis of decree dated 21.12.1991, and the same was decreed by the learned trial Court vide judgment and decree dated 08.10.2007.

Feeling aggrieved, the appellants-defendants filed an appeal against the aforesaid judgment, however, the learned First Appellate Court affirmed the findings recorded by the learned Trial Court.

Hence, this appeal at the behest of the appellants-defendants.

The learned counsel for the appellants contends that the deceased Piara Singh never suffered any statement/decreed in favour of the respondents. The appellants have become owners in possession of the suit land by inheritance and Mutation No.4474 has

rightly been sanctioned in their favour. He further states that the respondents never put up the decree for mutation during the life time of deceased Piara Singh as the same was the result of the fraud and misrepresentation. He further states that the alleged plot measuring 60 x 60 feet situated at Rania, which was to be given to deceased Piara Singh in exchange does not exist. Therefore, the judgments and decrees passed by the learned Courts below are liable to be set aside.

The learned counsel for the respondents states that in Civil Suit No.1440 of 1991 titled as *Piara Singh vs. Mahinder Singh etc.*, deceased Piara Singh suffered a decree in favour of the respondents by way of statement made by his counsel Sh. S. S. Randhawa who appeared on his behalf on 05.12.1991. Therefore, they were owners in possession of the suit land on the basis of the Civil Court decree dated 21.12.1991 and mutation of inheritance sanctioned in favour of the appellants is wrong and illegal.

I have heard the learned counsel for the parties and carefully gone through the entire record on file.

The learned Courts below have rightly passed the judgments and decrees after appreciating the fact that the appellants did not place on record any cogent evidence which suggests that the alleged decree dated 21.12.1991 was the result of fraud and misrepresentation, even Ex.PW3/A, certified copy of plaint of the

case titled as *Piara Singh Vs. Mahinder Singh etc.*, Ex.PW3/B, certified copy of vakalatnama which bears the signatures of deceased Piara Singh in Punjabi and Ex.PW4/A, certified copy of vakalatnama which bears the signatures of Mohinder Singh and Kuldeep Singh in Punjabi and Hindi, proved that the deceased Piara Singh had engaged his counsel Sh. S. S. Randhawa, Advocate who appeared on behalf of him and made the statement. Both the learned Courts below have concurrently held that the impugned judgment and decree is not result of fraud. Sh. S. S. Randhawa, Advocate stated that Piara Singh was also present on the date of passing the impugned decree. In addition to this, the learned Courts below also perused the revenue record which proved that the respondents are coming as owners in possession over the property in question from the date of decree.

In *Kashmir Singh Vs. Harnam Singh and another*, 2008 (2) RCR (Civil) 688, it has been held that the general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof.

On consideration, this Court finds that the contentions

raised by the learned counsel for the appellants have no merit as these only relate to the appreciation of evidence. No evidence has been shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of facts. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for. Consequently, this appeal fails and is dismissed.

21.01.2016

ashok

(JITENDRA CHAUHAN)
JUDGE