

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

R.S.A. No.1447 of 2010 (O&M)

Date of decision: 28.01.2016

Ram Avtar

...Appellant

Versus

Sanjeet Kumar and anr.

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Birender S. Rana, Sr. Advocate with
Mr. Rajinder Paul, Advocate
for the appellants.

Mr. Maninderjeet Yadav, Advocate for respondents.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 07.10.2009, passed by the learned Additional District Judge, Rewari, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 02.04.2007, passed by the learned Additional Civil Judge, Sr. Divn., Kosli, (for short, the 'trial Court'), has been dismissed.

The learned Senior counsel states that the finding of

the learned Courts below with regard to the family partition vide which the entire share of Gaje Singh, uncle of respondent No.2, was to go in favour of respondents and the entire share of Daulat Ram, father of the appellant and respondent No.2, will be inherited by the appellant, is wrong as Daulat Ram had already transferred 11 Kanal 16 Marla land out of his entire share i.e. 22 Kanal 16 Marla land in favour of his daughter Kaushlaya vide Civil Suit No.130. No family settlement was arrived at between the appellant and the respondents as well as Daulat Ram and Gaje Singh. Further, the learned Courts below have ignored that Daulat Ram himself had filed the Civil Suit No.376 titled as ***Sanjeet Kumar Vs. Krishan Kumar etc.*** only against respondent No.2 and not against the appellant, which proves the factum of fraud being played upon the appellants by the respondents by way of the alleged judgment and decree dated 20.08.1992 passed in this suit. The learned counsel states that the appellant was serving in the Indian Army and he neither appeared before the Court nor signed any paper. The appellant came to know about the alleged judgment and decree on 20.10.1999 when he came on annual leave. Lastly, it is asserted that the report of the handwriting and finger print expert also supports the case of the

appellant and the judgment and decree, in question, was violative of provisions of the Registration Act, 1908 and the Indian Stamp Act, 1899.

The learned Senior counsel cites '**Jai Narain Vs. Smt. Sona Devi**', 2006(2) RCR (Civil) 213, '**Jang Bahadur and others Vs. Bhagirathi**', 2006(2) RCR (Civil) 145, '**Hazari etc. Vs. Roop Narain**', passed in RSA No.543 of 1972, '**Bhoop Singh Vs. Ram Singh Major and others**', AIR 1996 SC 196, '**Phool Patti and another Vs. Ram Singh (Dead) through LRs and another**', 2015(1) RCR (Civil) 606.

On the other hand, the learned counsel for the respondents states that the appellant was present in the Court and also suffered a statement in Civil Suit No.376. It is contended that the suit of the appellant-plaintiff was hopelessly time barred, as he filed the same after seven years of passing of the judgment and decree dated 20.08.1992. He further submits that the alleged judgment and decree was passed on the basis of the family settlement. The appellant is not in possession of the suit property which is duly supported by the testimony of PW2 Ramesh Kumar, who has stated that the respondents are cultivating the suit land. The learned counsel refers to release deed dated

22.05.2003, wherein it has been held that Daulat Ram had transferred his land in favour of his grandsons namely Ajay Kumar and Jagbir sons of the appellant, which fact proves that son of respondent No.2, namely Sanjeet Kumar-respondent No.1, has become the owner of the whole land, which was earlier owned by Gaje Singh and sons of the appellant have become owner of the land which was owned by the appellant.

I have heard the learned counsel for the parties and carefully perused the entire record.

The learned Courts below have passed the judgments and decrees in favour of the respondents after appreciating the entire oral and documentary evidence placed on record by both the parties, which suggests that the respondents have proved their case in totality. The respondents have pleaded that the appellant was party to the civil suit wherein the alleged judgment and decree dated 20.08.1992 was passed and he was present at the relevant time and made a statement. To prove their case, the respondents placed on record the vakalatnama vide which Sh. Satbir Singh Yadav, Advocate was engaged by the appellant and respondent No.2 and during that time they were identified by one of their co-villager namely Bijender, who was clerk of Sh.

Mani Ram, Advocate. Further, Sh. Satbir Singh Yadav in his statement has stated that the appellant and respondent No.2 had appended their signatures over the power of attorney, written statement and the statement made in the Court i.e. Ex.DW7/B. Even the factum of statement made by the appellant and respondent No.2 is duly proved by the testimony of Sh. Mahender Singh, who was reader of the Court which passed the alleged judgment and decree dated 20.08.1992. The appellant has asserted that he was working in the Indian Army and was not present in the Court on 20.08.1992 and the judgment and decree dated 20.08.1992 is a result of fraud and misrepresentation. However, as he was serving in the Indian Army, he could have led evidence to suggest that he was not present in the Court at the relevant time, but he did not do so and furthermore, he has failed to prove any fraud or misrepresentation on the part of the respondents. This Court finds no fault in the findings recorded by the learned Courts below.

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 Senior counsel for the appellant have no merit. No evidence has been shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed.

28.01.2016

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(JITENDRA CHAUHAN)
JUDGE