

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

RSA No.190 of 2011
Date of decision : 05.12.2016

Jeewani

...Appellant

Versus

Hoshiara and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Ashwani Bakshi, Advocate for the appellant.

Mr. Ajay Chaudhary, Advocate for respondent Nos.1 and 2.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the impugned judgment and decree, whereby the suit for declaration, challenging the decree dated 16.04.1993 filed in the year 2008, has been dismissed by both the Courts below.

Mr. Ashwani Bakshi, learned counsel appearing on behalf of appellant-plaintiff submits that aforementioned judgment was obtained by playing fraud upon appellant and compromise Ex.C1 was not entered into as it is reflected that during the lifetime, she would be the owner and continue to be in possession of the property but did not sell the property. The aforementioned information came to the knowledge in the year 2007, accordingly suit aforementioned was filed. Fraud under Order 6 Rule 4 CPC

has been proved. The defendants also admitted that appellant-plaintiff was pardanashin lady. The findings rendered by the Courts below qua maintainability of suit is a result of fraud which is nothing but mis-appreciation of the evidence.

Mr. Ajay Chaudhary, learned counsel appearing on behalf of respondent Nos.1 and 2 submits that as per provision of Order 23 Rule 3-A of Code of Civil Procedure, independent suit is not maintainable, remedy was to move an application as decree was based upon the compromise. In support of his contention, he relies upon the ratio decidendi culled out by Hon'ble Supreme Court in *Pushpa Devi Bhagat (D) through LRs Smt. Sadhna Rai Vs. Rajinder Singh and others*, 2006 (3) RCR (Civil) 479 and *Daljit Kaur and another Vs. Muktar Steels Pvt. Ltd. and another*, 2014(1) RCR (Civil) 625.

He further submits that even if it had been a consent decree, appeal was not maintainable. Once statutory appeal is not available then the suit could not have been filed and thus urges this Court for affirming the findings under challenge.

In rebuttal, Mr. Bakshi, Advocate has relied upon ratio decidendi culled out by Hon'ble Supreme Court in *Mst. Kharbuja Kuer Vs. Jangbahadur Rai and others*, AIR 1963 Supreme Court 1203, wherein it has been held that if document has been executed by pardanashin lady, then burden to establish that she executed it after understanding, is on the person who asserts it. Defendants have failed to prove the same, and therefore burden has unnecessarily been fastened upon appellant-plaintiff and thus there is gross illegality and perversity.

I have heard learned counsel for parties and appraised the paper book and of the view that in view of provision of Order 23 Rule 3-A of the Code of Civil Procedure, separate suit after gap of 15 years was not maintainable, remedy was to invoke the jurisdiction of the same Court, in view of ratio decidendi culled out by Hon'ble Supreme Court in *Pushpa Devi Bhagat (D) through LRs Smt. Sadhna Rai's* case (Supra) and in view of ratio decidendi culled out by *Daljit Kaur and another's* case (Supra).

There is no force and merit in the submission of Mr. Bakshi, Advocate that for filing the suit on the basis of fraud, separate suit would lie and no application in the same Court.

In view of the aforementioned fact, once suit was not maintainable, factum of the findings qua parda nashin is inconsequential.

For the reasons aforementioned, I do not intend to differ with the judgment and decree rendered by Courts below, much less, the findings that suit is not maintainable is perfect, legal and justified.

No ground for interference is made out.

Accordingly, present appeal is dismissed.

05.12.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No