

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

1. RSA No.1460 of 2012 (O&M)
Date of decision : 18.01.2016

Naresh Kumar

...Appellant

Versus

Rattan Lal and ors.

...Respondents

2. RSA No.2587 of 2012 (O&M)
Date of decision : 18.01.2016

Naresh Kumar

...Appellant

Versus

Kesro Devi and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Nandan Jindal, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

CM No.3943-C of 2012

The application is allowed as deficiency in Court fees has been made good subject to all exceptions.

Applications stands allowed.

CM No.3944-C of 2012

For the reasons stated in the application, which is duly supported by an affidavit, delay of 15 days in refiling the present appeal is condoned.

Application stands disposed of.

CM No.3945-C of 2012

For the reasons stated in the application, which is duly supported by an affidavit, delay of 1 day in filing the present appeal is condoned.

Application stands disposed of.

Main Case

This order of mine shall dispose of two Regular Second Appeals bearing Nos.1460 of 2012 titled as Naresh Kumar Vs. Rattan Lal and ors. and RSA No.2587 of 2012 titled as Naresh Kumar Vs. Kesro Devi and ors.. RSA bearing No.1460 of 2012 has arisen out of the filing of the suit bearing No.285 of 01.06.2004 (hereinafter to be called as Second Suit) titled as Piara Lal Vs. Rattan Lal, whereby declaration in respect of property described herein reflected in the suit challenging the sale deed bearing No.3935 dated 31.10.1989, has been dismissed by both the Courts below, whereas the civil suit bearing No.18 dated 10.01.2004 (hereinafter called as the First Suit) filed by the grandson of Piara Lal against Piara Lal and Rattan Lal in which the aforementioned sale deed was challenged on the premise that property at the hands of Piara Lal was ancestral in nature. I shall be referring to the aforementioned suit as suit No.2 and suit No.1, in

essence, the RSAs are at the instance of the plaintiff and legal representatives of Piara Lal.

Mr. Nandan Jindal, learned counsel appearing on behalf of the appellant submits that Kaka Ram was the owner of the property/old constructed house which was acquired in the year 1935. He had four sons, Piara Lal, Parkash Chand, Purshotam Dass & Gian Chand. Piara Lal in some settlement acquired ownership of the aforementioned house. Piara Lal had two sons Tarsem Chand and Rattan Lal. Rattan Lal and his sons had fraudulently got the sale deed executed in his favour. Piara Lal on acquiring the aforementioned knowledge filed the suit No.2 challenging the sale deed. Prior to that, Naresh Kumar & Ramesh Kumar sons of Tarsem Chand son of Piara Lal had also filed the civil suit claiming that property at the hands of Piara Lal was ancestral and their father Tarsem Chand died in the year 1955 had some share in the ancestral property and, therefore, the sale deed could not have been executed except for legal necessity. Thus, aforementioned aspects have not been looked into by both the Courts below, thus, there is illegality and perversity. In order to prove the property being ancestral, sale deed of 1935 Ex.P3 has been placed on record.

I have heard learned counsel for the appellant and appraised the paper book.

The second suit filed at the instance of Piara Lal seeking declaration vis-a-vis challenge to the sale deed having been obtained by his son Rattan Lal by playing fraud. Ingredients of fraud as per the provision of Order 6 Rule 4 CPC have to be proved by leading direct and cogent evidence on behalf of party ascertaining the same. Piara Lal did not lead any

evidence to show that registered documents has a presumption of truth as all the documents are read over and explained to the Executant by the Registrar before, putting his signature, endorsing the Act of the Executant. The limitation to seek declaration is three years. In suit No.1, plaintiff has not been able to connect the property owned by Kaka Ram to show that property at the hands of Piara Lal was ancestral. Had it been ancestral, all the children of Kaka Ram had inherited. Once it has not been proved on record that Piara Lal acquired the property in joint, much less, property was ancestral in nature and thus in such eventuality, property cannot be deemed to be ancestral. No excerpts or Kursinama/pedigree has been proved on record to connect the property allegedly owned by Kaka Ram.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by both the Courts below, which are based upon appreciation of both oral and documentary evidence, much less, no substantial question of law arises for determination.

Accordingly, both appeals stands dismissed.

18.01.2016

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**(AMIT RAWAL)
JUDGE**