

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

109

Regular Second Appeal No.2602 of 2015 (O&M)

Date of Decision: January 05, 2016

Smt. Manta

...Appellant

Versus

Surja Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Ajay Jain, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Fatehabad, dated 04.03.2013, whereby the suit for declaration to the effect that the judgment and decree dated 11.07.2007 passed in Civil Suit No.177-C of 2007 titled as *Mahender Singh Versus Surja Ram* by the Permanent and Continuous Lok Adalat, Fatehabad, is not binding and operative qua the appellant-plaintiff, stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the learned District Judge, Fatehabad, on 06.02.2015.

2. It is the contention of learned counsel for the appellant that the ancestral property could not have been decreed in favour of respondents-defendants No.2 and 3, who are brothers of the appellant-plaintiff by respondent-defendant No.1-Surja Ram their father. Since it is an ancestral property, the said judgment and decree would not be binding upon the appellant-plaintiff as she would be entitled to succession to the said land. He contends that the statement given by Surja Ram in the civil suit, copy of which has been produced on record of the trial Court as Exhibit P-5, where he has deposed that the suit property was ancestral,

proves for itself as an admission on the part of respondent-defendant No.1 that it is an ancestral property and, therefore, the findings recorded by the Courts below that the onus was upon the appellant-plaintiff having been fully discharged, left the Court with no option but to grant the decree as prayed for. He, therefore, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned judgments but cannot accept the same in the light of the fact that the said admission on the part of respondent-defendant No.1-Surja Ram, father of the appellant and other respondents-defendants would not be binding upon respondents-defendants 2 and 3, as has been rightly held by the Courts below, where in their statements before the Permanent Lok Adalat they had denied the aspect that the property was an ancestral property. Evidence has also been produced on record showing that the land has been self-acquired by respondent-defendant No.1. That apart, in the civil suit which was decreed in favour of respondents-defendants 2 and 3, an affidavit was filed of the appellant-plaintiff, according to which she had no objection if the suit land is transferred by respondent-defendant No.1 in favour of respondents-defendants No.2 and 3 in the light of the family/mutual settlement and she would not claim any right in the property. The said affidavit, although, has been denied by the appellant-plaintiff but the respondents-defendants have proved the said document on the basis of statement of DW-2 Madho Ram, Notary Public. Further the appellant-plaintiff has not challenged the veracity of the said document by asserting it to be a forged and fabricated document as she has not filed any

criminal complaint seeking action against the respondents-defendants. That apart, no evidence has been led to prove that the said affidavit was not of the appellant-plaintiff except for her bald denial.

4. In view of the above, the findings as recorded by the Courts below cannot be faulted with as the same are in accordance with the pleadings and the evidence led by the parties and the conclusions drawn, therefore, on the basis therefore, are justified and in accordance with law.

5. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

6. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

7. In the light of the dismissal of the appeal, the application for stay i.e. CM No.6691-C of 2015, stands disposed of as infructuous.

January 05, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE