

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

RSA-1399 of 2014 (O&M)

Date of decision: 28.01.2016

Mahesh Kumar

...Appellant

Versus

Shankar Sharma and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sanjay Vashisth, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

The plaintiff/appellant filed suit for declaration. The trial Court vide judgment and decree dated 01.12.2009, dismissed the suit.

2. Aggrieved against the findings of trial Court, the plaintiff/appellant filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree dated 15.07.2013.

3. The Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal at the

behest of the plaintiff/appellant.

4. It is contended by learned counsel for the appellant that both the Courts below have not appreciated the fact that Smt. Gulabo Devi (since deceased) was having undisputed 1/5th share in the property. The said Gulabo Devi had challenged the collusive judgment and decree dated 25.01.1996 passed in civil suit No. 342 dated 26.04.1994 which itself substantiates the allegations that an illiterate woman had been misrepresented by the defendants/respondents. The consent decree was obtained by playing a fraud upon her on the assurance that the defendants will take care of her during her life time. The consent decree was without her free will and based on fraud. The learned counsel further submits that the consent decree was unregistered and it has no legal effect.

5. I have heard the rival contentions of learned counsel for the appellant.

6. The plaintiff/appellant i.e. legal representative of said Gulabo Devi and son of Matadin (since deceased) had claimed that the will executed in favour of Hari Charan and Matadin (since deceased) has no legal sanctity; it is an unregistered document and was obtained by fraud. A bare perusal of the record would reveal that Gulabo Devi herself appeared in the Court and filed the

written statement Ex. DW3/A. She had also admitted that she had come to the Court to make a Will in favour of Hari Charan and Matadin (since deceased) which establishes that she was in her good senses and was mentally prepared to transfer her ownership rights in favour of Hari Charan and Matadin. Moreover, Gulabo Devi had never objected to the Will during her lifetime, regarding the allegation that the same was obtained by fraud. Therefore, in the given facts and circumstances of the case, this Court is of the opinion that both the Courts below have rightly dealt with the issues in the right perspective. There are concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties. This Court finds that the contentions have no merit as they only relate to the appreciation of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence.

7. The Courts below have considered all material evidence on record and the findings recorded do not suffer from any perversity or illegality. Hence, no interference is called for.

Dismissed.

28.01.2016

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(JITENDRA CHAUHAN)
JUDGE