

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

RSA No.734 of 2014 (O&M)

Date of Decision.23.12.2016

Jagjit Singh

.....Appellant

Vs

Santa Singh

.....Respondent

Present: Mr. Vivek Suri, Advocate
for the appellant.

Mr. R.K. Dhiman, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit for recovery of amount of ₹2,80,000/-, has been decreed by both the Courts below.

The bone contention of Mr. Vivek Suri, learned counsel appearing on behalf of the appellant-defendant is that earlier the respondent-plaintiff had obtained the ex parte judgment and decree against Jagdish Singh son of Kehar Singh and application under Order 9 Rule 13 CPC was filed and the same was allowed. The pro note and the acknowledgment do not bear the signature of Jagjit Singh but of Jagdish Singh. Legal notice was also addressed to Jagdish Singh. All these factors have not been taken care of by the Courts below and therefore, there is gross illegality and perversity.

Per contra, Mr. R.K. Dhiman, learned counsel appearing for the respondent submits that the acknowledgment of notice is of Jagjit Singh. In fact Jagdish Singh and Jagjit Singh are one and the same person.

The concurrent finding of fact cannot be interfered with unless and until there is gross illegality and perversity.

I have heard learned counsel for the parties and appraised the paper book. During the course of the hearing, I called upon Mr. Vivek Suri to show copy of the application moved under Order 9 Rule 13 CPC seeking setting aside of the ex parte judgment and decree. If at all, Jagjit Singh and Jagdish Singh were not the same person, there was no occasion for the appellant to move the application. On perusal of the application, the appellant-judgment debtor has branded himself as “Jagdish Singh (in fact Jagjit Singh)”. For the sake of brevity, the memo of parties of the application moved under Order 9 Rule 13 CPC is reproduced as under:-

*“Santa Singh son of Parsa Singh resident of village Chalaila,
Tehsil and District PatialaDecree holder*

Vs.

*Jagdish Singh (in fact Jagjit Singh) son of Kehar Singh
resident of village Seora Tehsil and District Ludhiana
.....Judgment debtor”*

All these facts have been taken care of by both the Courts below. Filing of application under Order 9 Rule 13 CPC itself is a pointer/clincher that Jagjit Singh and Jagdish Singh are same person.

For the reasons aforementioned, I do not intend to differ with the finding rendered by both the Courts below as the same are based upon preponderance of evidence. No ground for interference is made out. The regular second appeal is dismissed.

**(AMIT RAWAL)
JUDGE**

December 23, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No