

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

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RSA No.2491 of 2015 (O & M)
Date of decision :26.10.2017

Santa

...Appellant

Versus

Mahender Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Adarsh Jain, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-appellant is in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Munshi, who was unmarried and issueless had suffered a consent decree dated 29.03.1982 acknowledging the family settlement. This consent decree was challenged by the plaintiff-appellant in Civil Suit No.115 of 1983. The aforesaid civil suit was dismissed on 25.02.1991. Thereafter, the aforesaid Munshi once again acknowledged the family settlement and suffered a consent decree in favour of the defendants, who are his nephews on 07.12.1999. This decree was once again challenged by the plaintiff by way of present suit.

Both the Courts have concurrently found that the decree was suffered by Munshi acknowledging the family settlement is valid. It has been held by the Courts that he was unmarried and issueless, therefore, nephews being members of the family have rightly been given the property by way of a family settlement.

Learned counsel for the appellant has vehemently argued that

the decree dated 07.12.1999 has to come into force only on registration. He

has submitted that once the Court had mentioned that the declaration shall be subject to registration in accordance with law then the decree was required to be registered before the defendant, who were the plaintiff in the previous suit, would be declared owner. The decree passed on 07.12.1999 is extracted as under:-

“ 4. For the reasons recorded above, suit is decreed and plaintiffs are declared to be owners in possession of the land in dispute in equal share, as fully detailed and described in para 1 of the plaint. This declaration shall be subject to registration according to law. Parties are left to bear their own costs. Decree sheet be drawn and file be consigned to record room.

Announced

Sd/-

Dated: 07.12.99

(Rajinder Goel),

Civil Judge (Junior Division) Palwal.”

I have considered the submission of learned counsel and with his able assistance gone through the judgments passed by the Courts below.

It is not in dispute that late Shri Munshi was unmarried and issueless. It is further not in dispute that the aforesaid Munshi had acknowledged the transfer of the property by an oral family settlement in the decree dated 29.03.1982. It is further not in dispute that the aforesaid decree was challenged by the plaintiff-appellant in a civil suit. Plaintiff failed in that suit.

Still further, a Civil Court decree is not an instrument of transfer. A decree for declaration is only for the purpose of declaring a right, title or interest in the property in accordance with Section 34 of the

Specific Relief Act.

It is well settled that such consent decrees, which are passed under Order 12 Rule 6 CPC on the basis of a family settlement between the family members is not required to be registered. There has been series of judgments on this issue right from 1955 SC 481 Sahu Madho Dass vs. Mukand Ram.

This Court while adjudicating upon the requirement of registration of consent decree has held that if the Civil Court decree is being passed on the basis of a past family settlement and there is no transfer of title through decree then the Civil Court decree is not required to be registered.

Reference in this regard can be made to the decision of this Court in RSA No.2708 of 2005 decided on 26.10.2017.

In the present case, it is proved that in pursuant to the family settlement, parties had agreed to separate and the Civil Court decree was acknowledging such family settlement.

Taking into consideration the aforesaid settled position of law, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Hence, this regular second appeal is dismissed.

26.10.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No