

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

RSA No.1802 of 2014 (O&M)
Date of decision : 01.08.2017

Mohit and another

...Appellants

Versus

Hawa Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.B. Goel, Advocate for the appellants.

ANIL KSHETARPAL, J.

The plaintiffs are in the present Regular Second Appeal against the concurrent judgments of the Courts below.

The plaintiffs had filed a suit for declaration with consequential relief of permanent injunction asserting that the Civil Court decrees dated 11.03.1995 and 16.05.1998 and consequent mutations are illegal, null, void and not binding on the rights of the plaintiffs. The plaintiffs had claimed that their grandmother had suffered a decree in favour of their uncle (son of grandmother) Hawa Singh. The aforesaid decree amounts to transfer of ownership and, therefore, the same being not registered is liable to be set aside.

The learned trial Court after appreciating the evidence recorded a findings of fact in para Nos.12 and 13, which are extracted as under:-

“12. Having due regards to the contentions raised by learned counsel for the parties. In the present case, it is admitted position that the land in question was under the ownership of one Ratia who was having two sons namely Hukam Chand and Suraj Bhan. Suraj Bhan had died issueless but during his lifetime he has suffered a decree in the year 1973 in favour of his four nephews namely Ramphal, Satbir, Jeete and Hawa Singh. These four persons had also inherited the property from their father Hukam Chand. It is also admitted position that Ramphal and Satbir had died issueless and, therefore, property has been inherited by their mother namely Dhanpati who is the 1st class heir as shown in the schedule attached to Hindu Succession Act. As per the schedule, mother is coming under the definition of 1st class heir while brothers have been shown as 2nd class heir. As per Section 9 of Hindu Succession Act which deals with the order of succession among heirs in the schedule clearly goes to show that heirs specified in schedule, those in Class I shall take simultaneously and to the exclusion of all other heirs. Thus, in view of the section 9 of Hindu Succession Act, the mother i.e. Dhanpati was competent to inherit the property of deceased Ramphal and Satbir and their brothers namely Jeete and Hawa Singh were not having any right in the property belonging to Ramphal and Satbir.

13. Furthermore, in the present case, said Dhanpati had suffered a decree dated 11.3.1995 in favour of defendant No.1 with regard to above said land and mutation No.1796 was also sanctioned on the basis of the above said decree. As per Section 14 of Hindu Succession Act, a female is absolute owner of the property, therefore, Dhanpati was very much competent to suffer decree of the property which she had inherited from Ramphal and Satbir in favour of

defendant No.1 Hawa Singh and as such in view of the above said decree, Hawa Singh had become owner in possession of the suit property. Furthermore, plaintiffs have alleged that the above said decree is null and void on the ground that it was result of fraud, misrepresentation and impersonation and in this regard no evidence whatsoever has been brought on record by the plaintiffs therefore, the above said averments cannot be said to be proved as stated above. Defendant No.1 Hawa Singh had inherited the above said property as a result of the decree dated 11.3.1995 which was suffered by Dhanpati being absolute owner of the suit property. Furthermore, defendant No.1 Hawa Singh was very much competent to suffer the decree of the year 1998 in favour of defendants No.2 to 4. Therefore, it is held that the above said all decrees dated 11.3.1995 and 16.5.1998 allegedly being suffered by Dhanpati and Hawa Singh are perfectly legal and valid and are not illegal, null and void in any manner. Since the plaintiffs have failed to prove that they are owners of the suit property and therefore, it is also held that they are not entitled to permanent injunction as prayed for. As such both these issues are decided against the plaintiffs and in favour of the defendants.”

With the findings aforesaid, civil suit filed by the plaintiffs was dismissed.

The first appeal filed by the plaintiffs was also ordered to be dismissed after re-appreciating the evidence.

Learned counsel for the appellants has submitted that the decree dated 11.03.1995 is liable to be set aside on the ground that it is not registered. He has further submitted that the decree is result of fraud and

misrepresentation.

I have carefully considered the submissions of the learned counsel for the appellants and have examined the record.

The appellants, who were plaintiffs in the trial Court, did not produce either the pleadings of the previous or the decree passed by the Court therein. The appellants had only produced the copy of the jamabandi for the year 2000-2001 and four mutations. Without production of copy of the plaint, written statement and the decree passed, it is not possible to record a findings that the aforesaid decree was result of fraud. From the reading of the pleadings, it is apparent that Late Smt. Dhanpati had suffered a civil court decree in favour of his son Hawa Singh on the basis of the family settlement. The claim made by Hawa Singh, was admitted by Late Smt. Dhanpati and it was on admission, the decree was passed. Smt. Dhanpati never challenged the aforesaid decree during her lifetime.

The decree dated 16.05.1998 was suffered by Hawa Singh in favour of defendant Nos.2 to 4, his own sons. The plaintiffs are sons of pre-deceased brother of Hawa Singh. The plaintiffs have no locus standi to challenge the decree suffered by Hawa Singh in favour of his sons.

Any Civil Court decree passed in favour of the family members on the basis of family settlement who have some semblance right does not require registration. In the present case, Lt. Smt. Dhanpati had suffered a decree in favour of his son who, certainly, have semblance of right in the property of her mother. Courts in India always lean in favour of family settlement and against disturbing it. Right from the year 1955, the Hon'ble Supreme Court has been upholding the decrees passed on the basis of the

family settlement. Some of the judgments are noticed as under:-

1. AIR 1955 SC 481,
2. AIR 1967 SC 292
3. AIR 1966 SC 323
4. AIR 1976 SC 807

This view of the Hon'ble Supreme Court has been followed even in subsequent judgments.

Therefore, it is held that the Civil Court decrees dated 11.03.1995 or 16.05.1998 did not require registration.

Learned counsel for the appellants has further submitted that both the decrees are result of fraud and misrepresentation. Both the Courts have noticed that the plaintiffs have not been able to prove fraud. Learned trial Court has noticed that the plaintiffs had only examined Kamla their mother. She was not able to give particulars of the alleged fraud. In absence of the particulars of fraud and evidence which is proved beyond any reasonable doubt, no findings on fraud can be returned.

For the reasons recorded above, I do not find any reasons to interfere in the concurrent findings of fact. Hence, Regular Second Appeal is dismissed.

01.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No