

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

RSA No.1786 of 2017 (O&M)
Date of Decision: May 24, 2017

Baljit Kaur

..Appellant(s)

Versus

Gurmail Singh and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Shiv Charan Bhola, Advocate
for the appellant.

ANITA CHAUDHRY, J.

CM-4325-C-2017

For the reasons set out in the application, same is allowed as prayed for and delay of 102 days in filing the appeal is condoned.

RSA No.1786 of 2017

This is the plaintiff's second appeal aggrieved by the dismissal of her suit and appeal.

The plaintiff claimed that she was the owner of land measuring 77 Kanals 10 marlas. The defendants are her nephews. It was claimed that she came to know that an application seeking partition of the land including her land was pending before the Assistant Collector and in the record there was a reference to a decree passed in 1996 but no such decree was suffered by her and it was

obtained by impersonation. It was pleaded that she had not received any summons from the Court nor she was living in village Warring Kher.

The plaintiff examined herself and tendered some documents. The defendants on the other hand examined her counsel in the earlier suit and tendered the written compromise and the copy of the judgment. They also proved the mutation which was entered subsequent to the judgment and decree. The Lower Court held that the plaintiff had taken the plea of fraud but had led no evidence. The suit was dismissed.

The findings recorded by the lower Court were affirmed by the Appellate Court. The Appellate Court noted that the plaintiff had been identified by the Nambardar and the decree was passed in 1996 and she had not challenged the same within a period of three years and had led no evidence to prove fraud.

I have heard the counsel for the appellant at great length and I find no merit in the appeal. When a party approaches the Court with a plea of fraud then the onus is upon the plaintiff to firstly plead and prove the manner in which fraud was played. The plaintiff was identified by her lawyer and by the Nambardar. The plea raised before the Court was that it was a case of impersonation. It was very easy for her to prove that fact. She should have examined a handwriting expert. The plaintiff even failed to summon the counsel who represented her before the Court or the Nambardar who identified her.

I see no infirmity in the findings recorded by both the Courts below. There is no merit in the appeal. The appeal is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

May 24, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No