

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

**RSA No. 836 of 2014 (O&M)
Date of Decision: 25.7.2017**

Smt. Chalti Devi and others

... Appellants

Versus

Smt. Pataso and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ashok Jindal, Advocate for the appellants

RAJIV NARAIN RAINA, J.

1. Appellant-Chalti Devi alongwith co-plaintiffs instituted a suit in the civil court at Ganaur claiming title over the suit property falling in *abadi deh*. The said property was claimed to be the ancestral property of the plaintiffs and had come to their share by virtue of a civil court decree dated 13th August, 1993 passed in Civil Suit No.72 of 1993, titled 'Smt. Mamkaur vs. Sukhpal etc.' One Begraj was the father of Pataso, the 1st defendant in the suit and respondent no.1, herein. The learned trial court found on evidence that neither Begraj nor Pataso, the 1st defendant was party to that suit. The suit was compromised between the parties.

2. In the present suit it is pleaded that Begraj had thumb-marked the compromise, but in what capacity, he thumb-marked the court compromise is not a known fact to evidence recorded before the trial court. There was no separate statement of Begraj regarding compromise Ex.C1 on the judicial file of the case. It appears from the cross-examination of one of the plaintiffs, namely,

Md. Firoz Khan, PW4 that initially, the suit plot in dispute was owned by one Ram

Kanwar and Munshi and later on, they sold the said plot to Chet Ram and subsequently, the same was exchanged by Begraj with said Chet Ram.

3. The testimony of PW4 Mampati falsifies the case of the plaintiffs that the suit property was ancestral in nature. The learned trial court dismissed the suit. An appeal was carried by the unsuccessful plaintiffs to the learned District Judge, Sonapat. The learned first appellate court has dismissed the appeal by affirming the judgment and decree of the trial court for the many reasons recorded in writing and clearly noticeable in the impugned judgment in appeal. I have read paragraphs 14 and 15 of the judgment of the first appellate court alongwith Mr.Jindal, learned counsel for the appellants and I find no infirmity whatsoever in the reasoning adopted.

4. As far as the compromise is concerned, learned District Judge reasoned that even if for the sake of arguments it is believed that Begraj had thumb-marked the compromise Ex.C1, though the document was not proved, even then the plaintiffs have not been able to prove that there was any reference to the disputed property in suit in the compromise Ex.C1 entered in previous suit. Obviously, the compromise dealt with some other property and not what was brought in lis in the suit. There was no reference to the disputed plot nor was there any mention of the disputed property in the details of the property given in the compromise.

5. To make matters worse for the appellants, there was clear evidence to establish that the disputed land was owned by respondent Pataso. It was alienated by virtue of the sale deed No.4927 dated 22nd March, 2006 (Ex.PW3/A) in favour of the second defendant who had purchased the same for valuable consideration. Accordingly, the first appellate did well to infer that the second defendant was a bona fide purchaser of the disputed plot and the

6. Mr.Jindal, learned counsel for the appellants argues that the compromise has been accepted by the other party, but admits that this issue was not raised before the trial court. Attempts to introduce foreign matter not pleaded in the suit nor any evidence led at the proper stage that the compromise was accepted by defendant no.1- Pataso and mutation was entered on the basis of that decree, then I would only say that a new issue cannot be allowed to be raised in second appeal for the first time without accompanying pleadings and evidence whichj has not even been prayed for additionally. Therefore, this argument is only noticed to be rejected.

7. In these circumstances, it is not possible for this Court to interfere with the judgments and decrees of the courts below, which do not apparently suffer from any illegality, irregularity or perversity nor can the same said to be tainted with any error apparent on the face of record so as to require interference by this Court in this second appeal. No question of law, much less a substantial one, arises for consideration of this court in this appeal. Second appeal does not lie against an appellate decree against findings of fact recorded after appreciating the evidence on record.

8. For the foregoing reasons, this appeal is held to be without substance and is hereby dismissed.

(RAJIV NARAIN RAINA)
JUDGE

25.7.2017
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No