

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

RSA No.542 of 2017 (O&M)

Date of decision : 14.11.2017

Shindo and others

...Appellants

Versus

Gurcharan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Saurabh Arora, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM Nos.13852-C to 13854-C of 2017

These applications are under Order 41 Rule 27 with a prayer to lead additional evidence. The appellants want to produce on file the copies of the revenue record to prove that the land was ancestral in the hands of Talok Singh and Smt. Santo. Appellants further wish to produce on file the copies of the telephone bills and a deed of settlement dated 05.02.2009.

All these documents were in existence when the parties went to trial. The revenue record is part of the public record. A deed of settlement as sought to be produced is even before filing of the suit.

Taking into consideration the facts available on the file and after noticing that all these documents were in knowledge of the plaintiffs and there is no reason why these documents were not produced during the course of trial or before the First Appellate Court, the applications are dismissed.

Main Case

The plaintiffs-appellants are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiffs had filed a suit claiming declaration that they are owners in possession of the land described in the plaint. The plaintiffs had also challenged a transfer deed dated 12.11.2008 executed by Smt. Santo in favour of defendant-Gurcharan Singh, her son, with respect to the land measuring 32 kanals.

Both the Courts below after appreciation of the evidence, available on the file, dismissed the suit filed by the plaintiffs.

The Courts have found that the plaintiffs had in fact kidnapped Smt. Santo and tries to get executed a transfer deed with respect to the land measuring 28 kanals 17 marlas. However, as Smt. Santo raised alarm in the office of Sub-Registrar, the aforesaid document was not registered.

Learned counsel for the appellants has submitted that the property in the hands of Smt. Santo was ancestral. The plaintiffs have not produced on file any document to prove that fact. A reading of the judgment would prove that no issue on this aspect of the matter was pressed before the Courts below. On the death of Talok Singh, the property was divided among the legal heirs namely plaintiffs, defendant and Smt. Santo. The property in the hands of lady is her absolute property.

Second argument of learned counsel is that the transfer deed is without any consideration. The transfer deed was executed by mother in favour of the son. The transfer deed is a document through which transfer inter se family is permitted without the payment of the stamp duty. For the execution of the transfer deed, no consideration is required to proved.

Next submission of the learned counsel is that there was settlement between the parties. The settlement is sought to be produced on file by way of additional evidence. This document was neither pleaded nor produced in evidence by the plaintiffs. Once the document is beyond the pleadings and beyond evidence, it cannot be taken into consideration by this Court for the first time in the Regular Second Appeal.

Learned counsel for the appellants in last has argued that it is not proved on the file that Smt. Santo was living with the defendant. Learned counsel relies upon the telephone bills which are in the name of Smt. Santo @ Joginder Kaur. These documents are also sought to be produced in additional evidence. Merely because telephone is in the name of mother, that would not prove that she was living all alone. The transfer deed is a registered document which has a presumption of truth. Unless there is some strong evidence to rebut the genuineness of the aforesaid document, the Court has to give effect thereto.

For the reasons recorded above, there is no scope for interference in the Regular Second Appeal.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

14.11.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No