

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

RSA No.173 of 1989 (O&M)

Date of decision : 19.01.2018

Bhim Singh and others

...Appellants

Versus

Bishambar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.R. Rana, Advocate for
Mr. R.S. Sihota, Sr. Advocate for the appellants.

Mr. Ritesh Aggarwal, Advocate for respondent Nos.1 to 4.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the Regular Second Appeal against the judgment passed by the First Appellate Court.

The plaintiffs had filed a suit for declaration challenging a civil court judgment and decree dated 10.04.1982 passed in favour of the defendants-appellants on the basis of the statement made by Gordhan who was owner of the property. Gordhan was not having any children. In a family settlement, he relinquished his right in favour of the defendants. Subsequently, the defendants-appellants filed a suit for declaration claiming that they are owners in possession. Gordhan appeared, filed admitting written statement and suffered a statement in the Court that he does not contest the suit. On basis thereof, the judgment and decree was passed on 10.04.1982.

The plaintiffs who are sons of Mohan Singh, other brother of Gordhan filed a suit challenging the aforesaid judgment and decree.

Learned trial Court after appreciating evidence, dismissed the suit.

Learned First Appellate Court reversed the finding on the ground that such judgment and decree requires registration before it can be given effect to. As the decree was not registered, hence, the suit filed by the plaintiffs was decreed and the judgment and decree dated 10.04.1982 was declared unlawful.

The following substantial question of law arises in the present case:-

1. Whether the judgment and decree passed by the Court under Order 12 Rule 6 CPC on the basis of the family settlement between the family members requires registration?

This Court has discussed the case law on the issue and has already opined that such decree does not requires registration. Reference in this regard can be made to the judgment passed by this Court in *RSA No.2708 of 2005, titled as Dhian Singh and others Vs. Mohinder Singh and others, decided on 26.10.2017* reported as *2017 (4) Punjab Law Reporter 729*.

It is undisputed between the parties that the judgment and decree passed by the Court is not creating rights in the property for the first time. The decree passed by the Court is only for declaration acknowledging the family settlement which had been arrived at in past. In fact in a family settlement, Gordhan had relinquished his share in favour of the defendants-appellants. In the Civil Suit, Gordhan had acknowledged that fact.

Learned First Appellate Court has wrongly held that such a

decree without registration is against the public policy. Mutual adjustment between the family members is always good for the society. Distribution of the property between the family members by way of oral family settlement is well recognized in the country. The Courts have always been leaning in favour of such family settlement and upholding the same. The family for the purpose of the family settlement has always been understood to be a larger body. All the members of the family settlement may not have a pre-existing right in the property.

In view of the detailed reasons recorded in the aforesaid judgment, the present Regular Second Appeal deserves to be accepted.

The Regular Second Appeal is allowed.

All the pending applications are disposed of, in terms of the aforesaid judgment.

19.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No