

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

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**RSA No.1681 of 1997 (O&M)
Date of decision: 22.11.2018**

Hakim Singh and others

..... Appellants

Versus

Avtar Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Jaideep Verma, Advocate
for appellant No.3.

Mr. K.S. Sidhu, Sr. Advocate with
Mr. G.S. Benipal, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while dismissing their suit for declaration claiming that the judgment and decree dated 19.11.1990 is illegal, null and void and consequent mutation entered is also liable to be set aside.

All the parties to the litigation are members of the family. Gita was common ancestor having two sons and daughters. Puran Singh son of Gita had no male child, however, three daughters namely Surjit Kaur, Jasminder Kaur and Labh Kaur. Avtar Singh is son of Labh Kaur. Puran Singh, defendant No.2 who was owner in possession entered into a family settlement in the year 1975 and the property in dispute fell to the share of defendant-respondent-Avtar Singh. This family settlement was acknowledged

in the judgment and decree dated 19.11.1990. The aforesaid judgment and decree has been challenged by brother of Puran Singh namely Hakim Singh @ Chetu. Both the Courts on appreciation of evidence have found that the property in the hands of Puran Singh is not proved to be co-parcenary. Still further, Puran Singh had also executed a Will in favour of Avtar Singh on 12.08.1993 and executed general Power of Attorney in his favour on 03.08.1992.

Thus, both the Courts dismissed the suit filed by the plaintiff.

Learned counsel for the appellants submitted that the decree required registration as Avtar Singh cannot be said to be member of the family. He further submitted that the defendant is not proved to be in possession and therefore, the Civil Court decree is liable to be ignored. He has further submitted that the family settlement has not been proved which was the sole basis of the judgment and decree.

This Court has considered the submissions of learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below and the record.

The judgment and decree passed on the basis of a previous family settlement cannot be treated as an instrument of transfer of immovable property requiring it to be compulsory registrable. This issue has already been examined by the Court bearing RSA No.2708 of 2005 titled 'Dhian Singh and others Vs. Mohinder Singh and others', decided on 26.10.2017. For the reasons stated in the aforesaid judgment, there is no substance in the first argument of learned counsel.

As regards next argument of learned counsel that the possession has not been delivered and family settlement has not been proved, it will be noted that both the Courts have found Avtar Singh to be in possession.

Learned counsel for the appellant could not draw attention of the Court to any substantive evidence which may establish that the findings of fact arrived at by the Courts below are erroneous. Still further, delivery or non-delivery of possession does not effect validity of a Civil Court judgment and decree. As regards argument of learned counsel that the family settlement has not been proved, the argument is clearly erroneous because once Puran Singh when appeared in the Civil Court admitted the family settlement and suffered a statement while appearing in the Court, the existence of family settlement is proved. Puran Singh had also filed a written statement in the present suit admitting family settlement. Hakim Singh @ Chetu has no locus standi to dispute family settlement arrived at by Puran Singh and his children including grand-children. Avtar Singh being grand child of Puran Singh was family member.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

In view of the aforesaid judgment, the miscellaneous application is rendered infructuous and therefore, dismissed.

22.11.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No