

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

201

RSA No.3853 of 1997 (O & M)

Date of Decision:19.01.2018

Bhim Singh (since deceased) through his LRs

...Appellant

Versus

Zora Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amarjit Markan, Advocate
for the appellant.

None for the respondents.

ANIL KSHETARPAL, J.(Oral)

This case has been put up by the office reporting that service is not complete, however, with the consent of learned counsel for the appellant, the appeal is taken up on board and finally heard.

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for declaration and permanent injunction challenging judgment and decree dated 23.04.1982.

Dispute in the present case is with regard to the estate of Bagga Singh, who died unmarried and issueless on 27.10.1988. Bagga Singh was father's brother of the plaintiff and the defendants, as all the parties to the present litigation are sons of Gajjan Singh, real brother of Bagga Singh. He was uncle of the parties to the litigation.

Bagga Singh in a family settlement had relinquished his share in favour of Zora Singh-defendant No.1. The aforesaid family settlement was acknowledged before the Court, which resulted into a judgment and

decree dated 23.04.1982. When Bagga Singh was alive, he challenged the

aforesaid judgment and decree but failed. First appeal was also dismissed.

Plaintiff-Bhim Singh thereafter filed a suit on 28.07.1989. The judgment and decree was challenged on three grounds:- (i) the property is ancestral in nature, hence, Bagga Singh could not transfer the same in a family settlement; (ii) the Civil Court judgment and decree required registration; (iii) the decree was result of fraud.

Both the Courts after appreciating the evidence available on the file, dismissed the suit filed by the plaintiff. Both the Courts have dealt with all the three grounds on which the judgment and decree is sought to be annulled and have found against the plaintiff.

I have heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by both the Courts below. Learned counsel for the appellant has submitted that the judgment and decree passed by the Civil Court in 1982 resulted in transfer of the property, therefore, it requires registration. He further submitted that the decree was result of fraud. He further submitted that the property is ancestral in nature.

With regard to first submission of learned counsel for the appellant, it is suffice to say that the property has not been transferred by way of Civil Court decree. Bagga Singh and Zora Singh were members of one family. In a family settlement, Bagga Singh had relinquished his share in favour of Zora Singh. Such family settlement was oral. Later on Zora Singh filed a suit and Bagga Singh appeared and admitted the claim of the Zora Singh. Bagga Singh even appeared in the Court and made a statement to that effect. In these circumstances, that decree dated 23.04.1982 was

In the considered opinion of this Court, such judgment and decree does not result in transfer of the property in presentie. Hence, it is not required to be registered. This Court has already dealt with this issue in detail and has held that such decrees do not require registration. Reference in this regard can be made to the judgment 2017 (4) Punjal Law Reporter 729 “**Dhian Singh and others vs. Mohinder Singh and others**”.

Next submission of learned counsel is with regard to decree being result of fraud and property being ancestral in nature. It may be noticed that Bagga Singh himself had filed a suit challenging the aforesaid decree. The judgment and decree dated 23.04.1982 was affirmed. Once Bagga Singh himself challenged the decree, and failed, then in the considered opinion of this Court, appellants are not at a better footing.

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

Regular second appeal is dismissed.

19.01.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No