

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

RSA No.1839 of 1999 (O&M)

Date of Order:07.02.2018

Balbir Singh and others

..Appellants

Versus

Durgo Bai and others

..Respondents

COCN No.720 of 2008

Durga Bai

...Petitioner

Versus

Balbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.A.K.Chopra, Senior Advocate, with
Mr. Ankit Midha, Advocate,
for the appellants.

Mr. G.S.Kaura, Advocate,
for the respondents

ANIL KSHETARPAL, J.

C.M.No.12184-C-2017

Prayer in this application is for bringing on record the legal representatives of Durgo Bai-respondent.

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to all just exceptions. The legal representatives mentioned in paragraph 3 of the application are brought on record for the purpose of prosecuting this appeal only.

Amended memorandum of parties filed along with the application is taken on record.

C.M.No.3599-C-2008

In view of the detailed judgment passed, C.M.No.3599-C-2008 has become infructuous, therefore, needs no order.

Main

By this order, I shall be disposing of Regular Second Appeal No.1839 of 1999 and COCP No.720 of 2008.

Defendants-appellants are in regular second appeal against the judgment passed by the learned first appellate court, reversing the judgment passed by the learned trial court while setting aside the judgment and decree passed on 30.07.1988.

Few facts would be necessary.

Ganga Singh was initially married to Kaushalya Bai and plaintiff Durgo Bai a daughter was born to the couple. After the death of Kaushayla Bai, Ganga Singh married to Smt. Khusian Bai. 4 sons and 6 daughters were born by the wedlock of Ganga Singh and Smt. Khusian Bai. Ganga Singh in a family settlement, distributed the property amongst his 4 sons i.e. Balbir Singh, Jangir singh, Shamsheer Singh and Gurdev Singh born from Smt. Khusian Bhai. The aforesaid family settlement was duly acknowledged by Ganga Singh in a civil suit filed by 4 sons noticed above and suffered a statement resulting into the decree dated 30.07.1988. Ganga Singh appeared in the Court and admitted the claim in the suit filed by his 4 sons. Durgo Bai, a married daughter, from the first wife, challenged the judgment and the decree dated 30.07.1988.

Learned trial court after appreciating the evidence available on the file, dismissed the suit. Whereas the learned first appellate court has chosen to reverse the findings on the following grounds:-

- (i) that the property is not proved to be ancestral, hence the decree required registration;
- (ii) It is not establish on the file that what was the share given to 6 daughters born to Ganga Singh from Smt. Khusian Bai (daughters are 7 in number, 6 from Khusian Bai and one from Kaushalya Bai);
- (iii) that the defendants have failed to prove that the property was ancestral coparcenary.

In the considered opinion of this Court, question which is required to be answered is “**whether the judgment and decree passed by the court in a declaratory suit acknowledging distribution of the property through family settlement requires registration?**”

This court has already dealt with the aforesaid issue in detail and has held that the declaratory judgment and decree passed by the court acknowledging family settlement through which property was distributed amongst the family members, does not require registration. Reference can be made to the judgment cited as **Dhian Singh and others v. Mohinder Singh and others, 2017 PLR(4) 729.**

Learned first appellate court has travelled beyond the pleadings and the evidence lead by the parties. Only plaintiff had come to the court challenging the decree. Six daughters from Smt. Khusian Bai, the second wife, had never filed any suit challenging the decree. The plaintiff has only filed a suit.

Still further plaintiff had claimed ½ share in the property on the basis of alleged prior family settlement. No evidence was led to prove the family settlement as attested by the plaintiff. When she appeared in the

witness box has admitted that the property had come from the ancestors.

In view thereof, the question framed earlier is answered in favour of the appellants.

The judgment passed by the learned first appellate court is set aside and that of trial court is restored.

The regular second appeal is allowed.

COCF No.720 of 2008

Late Smt. Durgo Bai is alleging violation of interim order passed by this court.

In view of the detailed judgment passed, there is no need to pass any further order.

February 07, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No