

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

**RSA No.710 of 2000 (O&M)
Date of Decision:29.11.2018**

Naseeb Kaur and others

...Appellant(s)

Versus

Harbhajan Singh

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Naresh Jain, Advocate for the appellants.
Mr.P.S.Jammu, Advocate for the respondent.

ANIL KSHETARPAL, J.

The plaintiffs-appellants are in the regular second appeal against the judgment passed by the learned first appellate court, dismissing suit for declaration with consequential relief of permanent injunction, challenging two previous decrees passed in the suits titled as 'Balkar Singh Vs. Harbhajan Singh' dated 18.2.1986 and 'Harbhajan Singh Vs. Balkar Singh' dated 5.8.1986.

Through the aforesaid two decrees, oral exchange of immovable property was acknowledged before the court and decrees were passed under Order 12 Rule 6 of the Code of Civil Procedure as the parties were not at issue. The legal heirs of Balkar Singh now claim that both the decrees were result of fraud and in fact there was no oral exchange of property.

On the other hand, defendant contested the suit and pleaded that in fact there was an agreement to sell executed by Balkar Singh, predecessor-in-interest of the appellants for sale of the land against total

sale consideration of Rs.42,000/- out of which Rs.23,000/- was paid as

earnest money. It was claimed that since there was apprehension of other co-owners filing a suit for pre-emption, therefore, the parties decided to enter into these two exchanges.

Learned first appellate court has found after appreciation of evidence that the entire sale consideration has already been paid and the court while examining the validity of the decree passed in a previous suit has a limited jurisdiction and such decree can only be set aside on the grounds available for cancellation of a contract.

In the present case, the plaintiff has failed to prove the fraud as alleged as found by the courts below. In fact no argument was raised during the hearing on fraud.

Learned counsel for the appellant submitted that in fact in the subsequent decree 1/4th share in the land measuring 4 kanal and 5 marla has been shown to be exchanged with plot measuring 10 marla and possession of the aforesaid plot has not been handed over.

This Court has considered the submission, however, the plaintiff has not filed the present suit for seeking possession on the basis of aforesaid decree of the court dated 5.8.1986. The present suit has been filed only for setting aside the decrees on the basis of fraud which the plaintiff has failed to prove. There are two Division Bench judgments of this Court in which it has been held that in a subsequent suit, the court cannot go behind the decree unless it is proved that the decree is obtained by fraud, misrepresentation or coercion or other similar grounds. The judgments of two Division Bench of this Court are **Gurdev Kaur and another Vs.**

Mehar Singh and others, 1989 (2) PLJ 182 and Harpal and others Vs.

Ram Piari and others, 1981 PLJ 492. These judgments have been upheld by Hon'ble the Supreme Court in the case of **Bhoop Singh vs. Ram Singh Major and others, 1995 (5) SCC 709.**

However, since it has come to the notice of the court that in fact there was an agreement to sell and payment of the amount has been proved, let a copy of the judgment be forwarded to the concerned Registering Authority for information and necessary action.

In view of the above, there is no ground to interfere. The present regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

29.11.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No