

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

RSA No.4100 of 2001 (O&M)

Date of Decision:28.11.2018

Jawala Singh

...Appellant(s)

Versus

Baldev Singh

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Amit Jhanji, Advocate for the appellant.
Mr.RPS Ahluwalia, Advocate for the respondent.

ANIL KSHETARPAL, J.

The plaintiff-appellant is in the regular second appeal against the findings of fact arrived at by the learned first appellate court.

The plaintiff has challenged a decree passed by a competent court of jurisdiction dated 10.11.1987 which was suffered by the plaintiff (Jawala Singh) in favour of his wife and Baldev Singh (who is stated to be person living with plaintiff-Jawala Singh and Bachan Kaur since childhood) and having been married by Jawala Singh and Bachan Kaur (husband and wife) with the daughter of a relative of the wife.

It would be noted that in the previous plaint dated 14.5.1987 jointly filed by Bachan Kaur wife of Jawala Singh and Baldev Singh son of Joga Singh, it was specifically mentioned that plaintiff No.1 is wife of defendant, whereas plaintiff No.2 is sister's son of the defendant and there was an oral family arrangement according to which properties were divided.

The defendant appeared before the Court, filed a written statement and suffered a statement, admitting the claim to be correct.

The learned trial court, after recording the finding that Baldev

Singh-defendant No.2 is sister's son, decreed the suit on the ground that such decree passed by the court amounts to transfer of the property worth more than Rs.100, and therefore, required registration before a title in the immovable property passes. However, the learned first appellate court has reversed the judgment and decree passed by the learned trial court on the ground that since family in the context of Joint Hindu Family particularly with reference to family settlement has to be considered as a larger family and not considered in narrow manner.

Learned counsel for the appellant, while referring to the statement of defendant-Baldev Singh, has submitted that relationship between the plaintiff and Baldev Singh is not clear. Hence, he submitted that the decree is liable to be set aside.

No doubt, in the cross-examination, a confusion has been created, because in the first line, Baldev Singh states that Bachan Kaur is his mother. Probably he is wanting to refer that and he treats Bachan Kaur as his mother. Thereafter he goes on to state that name of Jawala Singh-plaintiff is Chetano. In examination-in-chief, he has stated that he is son of sister of Jawala Singh and he used to reside with Jawala Singh and Bachan Kaur as they did not had any child and he was got engaged and married by Dyal Singh, brother of wife of Jawala Singh. Still further, father-in-law of Jawala Singh has appeared in evidence and has stated that they had put a condition before marrying their daughter to Jawala Singh to transfer some part of property in favour of defendant No.2 (Baldev Singh).

It is well settled that while examining the validity of the decree passed by the competent court of jurisdiction in a subsequent suit, the jurisdiction of the court is very limited. The decree can only be set aside on

the grounds available for avoiding contract. This Court is to test whether the present case falls within those parameters or not.

In the present case, it has come in the evidence that Jawala Singh performed marriage of defendant No.2 as his father. Photographs at the time of marriage have been placed on the file. It is also not the case that wife of Baldev Singh is not related to Bachan Kaur. Still further, the plaintiff Jawala Singh, his wife along with and Baldev Singh had jointly applied for bank loan, although the aforesaid document had not been exhibited on file.

In view of the above, there is no ground to interfere with the findings of fact arrived at by the learned first appellate court. The present regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

28.11.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No