

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

RSA No.1211 of 2009 (O&M)

Date of decision : 17.11.2018

Singh Ram and another

...Appellants

Versus

Rajbir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Gupta, Advocate for the appellants.

Mr. O.P.S. Tanwar, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM No.3588-C of 2009

For the reasons stated in the application, which is duly supported by an affidavit, delay of 85 days in filing the present appeal is condoned.

Application is allowed.

Main case

The plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing their suit for declaration challenging the Civil Court decree dated 24.03.1990 suffered by late Sh. Baru Ram who was closely related to the parties and had died issueless.

It is undisputed between the parties that late Sh. Baru Ram was

owner of 24 acres of land. He was unmarried and issueless. On the basis of family settlement, he initially suffered a decree in favour of the plaintiffs as well as father of the defendants including Mihan Singh on 07.04.1972. This decree is not in dispute. However, late Sh. Baru Ram thereafter suffered a decree of the remaining land in favour of the defendants namely sons of Mihan Singh. This decree dated 24.03.1990 is subject matter of challenge in the present proceedings.

Both the Courts on appreciation of the evidence, have dismissed the suit filed by the plaintiffs. The Courts have recorded that the plaintiffs have failed to prove the fraud and since the decree was based upon the family settlement, therefore, it did not require registration.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel appearing on behalf of the appellants has submitted that since the defendants were not have any pre-existing rights, therefore, the decree requires registration. He further submitted that he has filed an application for additional evidence i.e. CM No.5838-C-2009 seeking to produce the report of the Forensic Science Laboratory dated 30.10.2006 to prove that Baru Ram never appeared in the Court in the proceedings which resulted into the decree dated 24.03.1990.

This Court has considered the submissions of the learned counsel for the appellants. However, find no substance therein.

In the context of the family settlement, the word “family” is not to be narrowly construed and is considered as a larger family. It is not in

dispute that Albela was common ancestor having two sons Harnam and Udey Ram. Baru Ram is son of Harnam Singh whereas the defendants are the grandsons of Kanhiya who was son of Udey Ram. If the argument of the learned counsel for the appellants is to be accepted, then even the previous decree dated 07.04.1972 is also null and void because it requires registration as the plaintiffs in the previous decree were all sons of Kanhiya. However, the word “family” has been considered by Hon'ble the Supreme Court in the context of family settlement in the judgment **AIR 1971 Supreme Court, 1041, Krishna Beharilal V. Gulabchand** and held that the word family cannot be construed narrowly. Hence, first argument of the learned counsel for the appellants is rejected.

Next submission of the learned counsel is with reference to the report of the Forensic Science Laboratory. In this respect, it may be noticed that a similar application was filed before the First Appellate Court which was rejected by giving cogent reasons and the aforesaid order passed by the First Appellate Court has not been challenged. In any case, once the Court is examining the appeal against the main judgment, the Court is not powerless to examine the correctness of the aforesaid order irrespective of the fact that whether that order has been challenged specifically or not. However, the report of the Forensic Science Laboratory about the thumb impression of Baru Ram is only an opinion. It is not conclusive and final. The Forensic Science Laboratory has given an opinion on the basis of First Information Report which has been lodged by the appellant-Singh Ram. No evidence has been brought on record to prove that what has happened after the aforesaid First Information Report was registered. Still further, the plaintiffs were

given enough opportunities by the Courts below to substantiate their plea of fraud but the plaintiffs failed to lead sufficient and cogent evidence to prove that decree dated 24.03.1990 was either result of fraud or impersonation.

In view of the aforesaid, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

In view of the above, an application for additional evidence bearing CM No.5838-C of 2009 is also disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

17.11.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No