

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

104

**RSA No.4932 of 2011 (O&M)**

**Date of decision: 28.05.2018**

Rani Bai and others

**..... Appellants**

Versus

Bhagwan Dass and others

**..... Respondents**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Namit Gautam, Advocate  
for the appellants.

Ms. Sakshi, Advocate, for  
Mr. Gaurav Chopra, Advocate  
for the respondents.

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**ANIL KSHETARPAL, J. (ORAL)**

Plaintiffs-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below dismissing the suit filed by the plaintiffs for declaration claiming that she continues to be owner of 1/4<sup>th</sup> share of land measuring 64 kanals and one marla. She further sought for setting aside the judgment and decree dated 05.05.1994.

The plaintiffs-appellants have based their claim on the ground that the plaintiff No.1 is a widowed daughter-in-law whereas plaintiff No.2 is her minor daughter. She further claimed that the property is ancestral co-parcenary property and the decree was collusive in nature. Both the Courts after appreciating the evidence available on the file have found that Bhagwan Dass, father-in-law of appellant No.1 had purchased the property through three registered sale deeds in the year 1980 (two sale deeds) and

1987 (one sale deed). Hence, the Courts have found that the entire base of the case set up by the plaintiffs is false.

Learned counsel for the appellants submitted that in the previous litigation which resulted into decree dated 05.05.1994, it is the defendants who have pleaded that the property is joint Hindu family ancestral property. He submitted that once there is an admission, the defendants cannot be permitted to take a contrary stand.

This Court has considered the submission. No doubt, in the previous proceedings, the pleadings of the defendants herein are to that effect, however, in the present case, the evidence has been led to prove that the property is neither ancestral nor co-parcenary. In fact, the property was purchased by Bhagwan Dass through different registered sale deeds. No doubt, the plaint filed in the previous suit is a piece of evidence. However, once conclusive evidence has been led in this suit, the plaintiffs-appellants cannot take benefit thereof. Still further, the previous suit was filed by Puran Chand, Hans Raj and Milk Raj against their father Bhagwan Dass. It was a declaratory suit filed on the basis of a family settlement and since the suit was not contested by Bhagwan Dass, therefore, it was decreed under Order 12 Rule 6, CPC. There is no adjudication by the Court in the previous proceedings regarding whether the property is ancestral co-parcenary property or not.

Next argument of learned counsel for the appellants is that the previous litigation is based upon a family settlement dated 01.02.1993 and the plaintiffs-appellants being members of that family were necessary party. This Court has examined the argument. However, once the property was self-acquired property, the husband of plaintiff No.1 and father of the

plaintiff No.2 had no pre-existing right, title or interest in the property. Such being the position, the plaintiffs-appellants cannot claim that the previous family settlement is bad as they were not party.

Learned counsel for the appellants has further submitted that the earlier previous decree is collusive in nature. He submitted that the decree was passed as Bhagwan Dass did not contest the previous suit filed by his sons. In the considered opinion of this Court, such decree cannot be said to be collusive. It is a decree passed by the Court as per the provisions of Order 12, Rule 6, CPC which clearly provides that if the defendant does not contest, the Court is entitled to pass a decree. A decree which has been passed without any contest, is a legal and valid decree.

The pending miscellaneous applications, if any shall stands disposed of accordingly.

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

Appeal is dismissed.

**28.05.2018**

Dinesh Bansal

**( ANIL KSHETARPAL )  
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No