

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

**RSA No.2824 of 2013 (O&M)
Date of Order:18.12.2018**

Balbir Singh

..Appellant

Versus

Shivraj Puri and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aashish Aggarwal, Senior Advocate, with
Mr. Govind Chauhan, Advocate,
for the appellant.

Mr. Kanwaljit Singh, Senior Advocate, with
Ms. Payal, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below while dismissing his suit for declaration challenging the validity of civil court judgment and decree dated 08.06.1995 passed in favour of defendant no.1 and against late Smt. Gurdeep Kaur, who was maternal grand mother of defendant no.1.

The decree passed by the court on 08.06.1995 has been challenged on the ground that the decree is result of fraud and impersonation and the decree does not result in transferring immovable property more than Rs.100/-.

In the written statement, the judgment and decree was defended on the ground that it was result of family settlement as defendant no.1 is grand child of late Smt. Gurdeep Kaur, who had suffered the judgment and

decree.

Both the courts on examination of the evidence have concurrently found that the plaintiffs have failed to prove either the ground of fraud or impersonation or has failed to prove that the decree is bad for non-registration.

This court has heard learned senior counsels for the parties at length and with their able assistance gone through the judgments and the record.

Learned senior counsel for the appellant has submitted that in the present case courts have failed to exercise power as available under Section 73 of the Evidence Act, 1872. He further submitted that the judgment and decree pales into insignificance once there is no updation of the revenue record in the form of mutation on the basis of a decree. He further submitted that possession is still with the plaintiff and other legal heirs and therefore, the decree has not been acted upon. He further submitted that the plaintiff and other defendants who are heirs of late Smt. Gurdeep Kaur were not party to the aforesaid suit. He also submitted that unless and until decree is registered, there cannot be any transfer of title.

As regards first argument of learned counsel based upon Section 73 of the Evidence Act, 1872, the power with the court is only an enabling provision and does not mandate that the court would in every case make comparison of signatures/writing/seal. The plaintiff who has come to the court with positive assertion is required to stand on his own legs. In the present case, plaintiff got examined a Fingerprint and Handwriting Expert who has opined that the thumb impressions of late Smt. Gurdeep Kaur are not comparable. Learned counsel while trying to pick holes in the report

submitted by a Fingerprint and Handwriting Expert examined by the defendants wants this court to return a finding that late Smt. Gurdeep Kaur did not suffer the decree. On careful perusal of the judgments passed by the courts below, it is apparent that the court has not only relied upon the report Ex.DW3/A submitted by the Fingerprint and Handwriting Expert examined by the defendants but has also relied upon the statement of Sh. K.L.Tantia, Advocate, who had been appearing for late Smt. Gurdeep Kaur in various litigations including the judgment and decree dated 08.06.1995. Statement of Sh. K.L.Tantia, Advocate, is elaborate and proves beyond reasonable doubt that it was late Smt. Gurdeep Kaur who has appeared in the court and had suffered a statement.

As regards second and third argument, it may be noted that updation of the revenue record is only for fiscal purpose. Mutation neither results in conferring of a title nor it takes away any right or title. Merely because a judgment and decree has not been given effect to in the revenue record, the judgment and decree does not lose its validity or enforceability.

Same is the position with regard to the next argument of learned counsel for the appellant that possession is with the plaintiff. Even if plaintiff is in possession that would not make any difference to the validity of a judgment and decree passed by a court.

Next argument of learned counsel for the appellant that the plaintiff and other legal heirs were not party to the aforesaid litigation, it may be noticed that originally Makhan Singh was owner of the entire property. There was a family settlement in which late Smt. Gurdeep Kaur, widow of Makhan Singh came to own 15 kanals and 9 marlas of land. It

may be noted that all the Class-I heirs respectively got their share in the property as per family settlement. Thus, late Smt. Gurdeep Kaur was exclusive owner of the property. In such circumstances, plaintiffs were not required to be impleaded as a party in the suit which resulted into judgment and decree dated 08.06.1995.

Last argument of learned counsel is with regard to the effect of non-registration of the decree. This issue has been examined by the court in a previous judgment in the case of *Dhian Singh and others vs. Mohinder Singh and others, PLR 2017 (4) 729.* In view of the reasons recorded in the aforesaid judgment, a civil court decree passed is not document of transfer of title but is only an acknowledgment of a family settlement, which has been arrived at and admitted by the parties to the litigation.

In view of the aforesaid, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

December 18, 2018
nt

(ANIL KSHETARPAL)
JUDGE

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