

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

RSA No.781 of 2013 (O&M)

Date of decision : 18.12.2018

Parkash Kaur

...Appellant

Versus

Joginder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.K. Prajapati, Advocate for
Mr. R.S. Madan, Advocate for the appellant.

Mr. V.B. Aggarwal, Advocate for respondent No.1.

Ms. Ramanjit Kaur, Advocate for
Mr. Onkar Singh, Advocate for respondent Nos.9 to 12.

ANIL KSHETARPAL, J. (ORAL)

CM No.2162-C of 2013

For the reasons stated in the application, which is duly supported by an affidavit, delay of 35 days in refiling the present appeal is condoned.

Application is allowed.

Main case

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below dismissing her suit for declaration challenging the correctness of two judgments and decrees dated 09.03.1987 and 27.04.1988. She also challenged the release

deed executed by the family members including herself dated 28.08.2000.

The plaintiff has pleaded that their common ancestor Lachhman Singh had suffered decree dated 09.03.1987 in favour of his son-Joginder Singh. Subsequently, there was another civil decree between Joginder Singh and Ranjit Singh.

The defendants contested the suit and pleaded that pursuant to the family settlement arrived at various stages, the judgments and decrees were passed and the release deed was executed.

It was further pleaded by the defendants that previously also similar suit was got filed from Gurdeep Singh and the dispute between the family members was later on settled and the suit was dismissed as withdrawn after the parties had settled the matter.

On appreciation of the evidence, the Courts have found that the decrees passed are neither result of fraud nor these judgments and decrees suffer from any illegality. The Courts have found that the property is not proved to be ancestral and it is the plaintiff herself who had executed the release deed as a major alongwith other family members. The Court has further found that this litigation is at the behest of Ranjit Singh, Uncle of the plaintiff with whom she is residing on account of death of her parents.

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

Learned counsel for the appellant submitted that the plaintiff was minor on the day the release deed dated 28.08.2000 was executed. He submitted hence the judgments passed by the Courts below are erroneous.

However, when the learned counsel was requested to point out from the pleadings that whether such fact was pleaded or not, he could not draw attention of the Court to such pleadings. Still further, on reading of the issue framed by the trial Court, it is apparent that no issue on this aspect was got framed. This clearly shows that there was no pleadings that the release deed was executed on the day she (plaintiff) was minor. Still further, learned counsel for the appellant submitted that Ex.P29 is a certificate issued by the Education Board of Haryana when she passed her Middle Standard Examination. It may be noted that in the absence of any pleadings and the issue framed, this Court cannot be expected to examine a new case being made out at the stage of Regular Second Appeal.

Still further, both the Courts have found that the suit filed by the plaintiff was time barred, having been instituted on 17.04.2006.

The scope of interference in the Regular Second Appeal is limited and the Court can examine the correctness of the judgments passed by the Courts below. If a question of fact is sought to be raised for the first time, it would not be appropriate for the Court to examine the question unless the foundation has been laid in the pleadings.

In view of the above, the present Regular Second Appeal is dismissed.

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

18.12.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No