

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

RSA No.192 of 2015 (O&M)

Date of decision: 26.2.2018

Kartar Singh

....Petitioner

Versus

Ram Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr.G.S.Nagra, Advocate for the appellant.

KULDIP SINGH, J. (Oral)

The present appeal has been filed against the judgment and decree dated 26.9.2014 passed by learned Addl. District Judge, Jind affirming the judgment and decree dated 1.9.2011 passed by the learned Additional Civil Judge (Sr.Divn.) Narwana vide which suit filed by the plaintiff was dismissed leaving the parties to bear their own costs.

The short controversy which needs to be noticed for the purpose of disposal of the present regular second appeal is that plaintiff has challenged the judgments and decrees dated 14.9.1995 and 5.5.1997 suffered by her mother Smt.Rijkan in favour of defendants No.1 and 2 and in favour of Bhagwan Singh respectively, claiming that the said judgments and decrees are the result of fraud and misrepresentation. He also challenged the release deed bearing No.353 dated 12.5.2005 suffered by her mother in favour of defendant set No.4. Plaintiff had claimed that he never entered into family settlement. He had also claimed that Smt.Rijkan never suffered any decree as she was over 90 years of age at the time of her death.

She could neither hear nor see properly and had lost her ability to take proper decisions due to her age. It was further claimed that suit property was co-parcenary and ancestral in the hands of Smt.Rijkan and plaintiff is the member of the Joint Hindu Family. It also came out that as per the stand of the defendant, age of Rijkan was 60-62 years and she was in good health.

From the pleadings of the parties, following issues were framed:

- “1. Whether the plaintiff is owner in joint possession to the extent of his share as alleged? OPP.
2. Whether the judgment and decree dated 14.9.1995 in civil suit No.602 of 7.6.1995 titled as 'Ram Singh Versus Rizkan' and judgment and decree dated 5.5.1997 in civil suit No.293 of 7.4.1997 in case titled 'Bhagwan Singh versus Smt.Rizkan are wrong, illegal, result of fraud, by misrepresentation, null and void and thus liable to be set aside? OPP.
3. Whether the release deed No.353 dated 12.5.2005 and mutation No.4979 qua land 26 kanals 14 marlas are illegal, null and void, result of fraud and misrepresentation? OPP.
4. Whether the plaintiff is entitled to decree of declaration with consequential relief of permanent injunction as prayed for? OPP.
5. Whether the present suit is hopelessly time barred? OPD.
6. Whether the present suit is not maintainable? OPD.
7. Whether the plaintiff has not come to the court with clean hands and suppressed true and material facts from the Court? OPD.
8. Relief.

The trial court while noticing that Rijkan had six sons and two daughters, found from the evidence and that Rijkan was in sound disposing mind. No fraud or misrepresentation in execution of decree was proved. It also comes out that plaintiff was living in a different village. In any case, it

is proved that Rijkan got the disputed property by way of a decree of the Court and was the absolute owner of the same. Since fraud and misrepresentation are not proved, therefore, she had a right to dispose it of in the way she likes. Since she was absolute owner, therefore, question of her being coparcener does not arise as it came to her by way of decree after litigation with third person. There are concurrent findings of facts recorded by both the Courts below. No question of law arises in the present appeal. There is no illegality or perversity in the findings recorded by both the Courts below. Hence, there is no ground to interfere with the same and the present appeal is dismissed.

(KULDIP SINGH)
JUDGE

26.2.2018
Meenu

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