

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

**RSA No.3956 of 2015 (O&M)
Date of Order: 17.09.2018**

Surjit Singh and another

..Appellants

Versus

Baldev Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Goyal, Advocate,
for the appellants.

ANIL KSHETARPAL, J(Oral)

Plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Gurdial Singh was the common ancestor of the parties. Smt. Bhagwan Kaur is widow, whereas he has two sons, namely, Gurdev Singh and Baldev Singh and one daughter Baldev Kaur. Gurdial Singh had further two sons, namely Surjit Singh and Karamjit Singh, the appellants, before this court.

It is undisputed that on the basis of family settlement, which was later on acknowledged by a civil court judgment and decree dated 17.03.1987, certain property was distributed amongst the family members. In fact, 2 suits were filed and decreed on the same day i.e. On 17.03.1987. However, there was a subsequent suit filed in which effect of decree passed on 17.03.1987 as the affect of the suit filed by Surjit Singh and Karamjit Singh sons of Gurdial Singh was effaced vide decree dated 23.02.1989. The

aforesaid decree was passed on the basis of compromise. The court found that no doubt defendants were minors but court guardian has given certificate to the effect that compromise is for the benefit of the minors.

Still further Gurdev Singh father of two minor defendants had also filed an affidavit that the compromise is for the benefit of the minor.

The order passed by the court on 13.02.1989 is extracted as under:-

“Heard. Record perused. The parties had already effected a compromise. Written compromise was produced on the file as Ex.CX and the statements of the parties regarding this compromise were recorded on 15.09.1988. But thereafter the case was adjourned twice as the lawyers were on strike. Today Sh. B.D.Mittal, who represented the minor defendants, has given certification on the compromise to the effect that the compromise Ex.CX is for the benefit of minor defendants. Besides this, an affidavit of Gurdev Kaur (Singh) guardian of minor defendants is already on the file according to which the compromise in question is for the benefit of the minors. In view of this situation, the suit of the plaintiff is decreed in terms of the compromise Ex.CX which will be read as part of the decree. Decree sheet be prepared, file be consigned to the records.”

After the judgment and decree was passed on 13.02.1989, it is undisputed that Smt. Bhagwan Kaur, the grand mother had transferred certain property in favour of plaintiffs-appellants, namely, Surjit Singh and Karamjit Singh.

Plaintiffs Surjit Singh and Karamjit Singh filed a suit challenging the judgment and decree dated 13.02.1989, whereas defendants-respondents filed a counter claim challenging the sale deed executed by Smt. Bhagwan Kaur in favour of plaintiffs-appellants dated 13.10.1999.

Both the courts after examining the evidence have dismissed not only the suit but also the counter claim.

Learned counsel for the appellants submitted that in the previous suit, which resulted into a judgment and decree dated 13.02.1989, Surjit Singh was wrongly shown as minor, although, he was major. However, on being requested to point out that where this point was raised before the courts below, learned counsel frankly admitted that although in the pleadings, it was projected but ultimately during the course of arguments, this fact has not been noticed by the courts below.

This court cannot doubt that both the courts have committed an error in noticing the arguments of learned counsel appearing for the parties. Learned first appellate court has in detail noticed the arguments of learned counsel for the parties, however, the issue of Surjit Singh being major has not been raised.

The court record is presumed to be correct unless it is established that there is some error in the court record. In any case, once Gurdial Singh, father of the plaintiffs-appellants had given an affidavit, admitting that the compromise Ex.CX in the previous litigation, is for the benefit of the minor and court guardian had also certified that fact, this court in a subsequent suit cannot set aside that finding unless any prejudice is shown. In fact all the parties to the litigation are family members and they have been resolving their dispute through family settlements, which is a

norm in the families. Still further, the suit has been filed after a period of 20 years. There is no explanation for filing the suit after 20 years. Hence, both the courts have correctly held that the suit filed by the plaintiffs was barred by limitation. Second appellant, namely, Karamjit Singh, also attained majority on 01.06. 1993, whereas the suit was filed on 03.06.2006.

In view thereof, 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.

September 17, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No