

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

RSA No.5230 of 2014 (O&M)

Date of Decision:18.12.2018

Virender Kumar @ Virender Singh and others

...Appellant(s)

Versus

Darshani Devi and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Deepak Sharma, Advocate for the appellants.
Mr.Pankaj Bali, Advocate for respondents No.1 to 3.
Mr.Fateh Saini, Advocate for respondent No.5.

ANIL KSHETARPAL, J.

The plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts, while dismissing their suit.

The plaintiffs have filed a suit for declaration, challenging the validity of the judgment and decree dated 21.10.1994 suffered by their father-defendant No.2 in favour of defendant No.1-Rampal his nephew. The plaintiffs pleaded that defendant No.2 was addicted to liquor and he had executed a sale-deed in favour of defendant No.1. Thereafter, defendant No.1, while sensing opposition, filed a suit on the basis of a family settlement and decree was got passed. It was pleaded case of the plaintiffs that since the property is ancestral in nature, therefore, the decree is invalid as defendant No.2 was not the exclusive owner of the property.

Defendant No.1 contested the suit, whereas defendant No.2 supported the case of the plaintiffs.

The learned trial court, after re-appreciating the evidence, has been produced to prove that the property is ancestral in nature and although the plaintiffs had moved an application for getting prepared excerpt but no excerpt has been produced, dismissed the suit. The learned trial court further noticed that as per mutation Ex.P8/T, defendant No.2 became owner pursuant to a Will executed by Bihari Lal. The learned trial court further found that there is no evidence of fraud.

The learned first appellate court, after re-appreciating the evidence, has dismissed the appeal. It may be noted that both the courts below have further held that the suit filed by the plaintiffs was barred by time.

Learned counsel for the appellants made sincere attempt to persuade this Court to take a different view by submitting that the alleged family settlement on the basis whereof decree was passed, cannot be a family settlement in absence of plaintiff, however, the learned counsel could not draw attention of the Court to any such submission having been made before the courts below on this aspect of the matter.

This Court, while exercising jurisdiction of second appeal, is to examine the correctness of the judgments passed by the courts below. Any argument based on question of fact cannot be examined by this Court for the first time without foundation having been laid.

In view of the above, there is no ground to interfere. Hence, regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

18.12.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No