

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.239 of 2017 (O&M)
Date of Decision:11.10.2018

Rajo

...Appellant

Versus

Chhoti wd/o Mansa (deceased)through LR's and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Surender Dhull, Advocate
for the appellant.

ANIL KSHETARPAL, J.(oral)

Plaintiff-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court. In fact, learned trial Court has dismissed the suit whereas learned First Appellate Court has partly decreed the suit filed by the plaintiff by recording the findings that the plaintiff is entitled to 1/4th share in the property.

The property in dispute is a small house. The defendants claim that they are entitled to 3/4th share in the property as they were owners of half share and also entitled to 1/4th share which belonged to Abhey, the vendor of the plaintiff. This fact had been acknowledged by him in a civil Court decree dated 27.02.1985. The civil Court decree which was passed on the basis of family settlement in the year 1985 alongwith copy of plaint/written statement, statement of Abhay Ram, statement of Dhan Singh etc. had been produced in the Court. Learned counsel for the appellant submitted that since the decree

passed by the competent Court of jurisdiction has not been incorporated/reflected in the revenue record, therefore, the decree has ceased to exist. He further submitted that the decree passed was collusive in nature.

This court has considered the submissions, however, find no substance therein. A decree/judgment passed by the competent Court of jurisdiction does not come to an end merely because it has not been incorporated in the revenue record. Through the decree exchange between the parties on the basis of family settlement was recognized. Under Order 12 Rule 6 of CPC such decrees are permissible to be passed and those decrees are valid and enforceable. The mutation on the basis of a sale-deed or a decree is only for a fiscal purpose only for updation of the revenue record. The mutation in the revenue record is neither a document of title nor gives rights or any cause of action. Hence there is no substance in the first argument of the learned counsel for the appellant.

With regard to second argument, it may be noted that Abhey Ram and defendants were members of joint hindu family. Way back in 1985, they resolved their dispute by way of family settlement which was acknowledged in the Court. In such circumstances, the decree passed by the Court is only acknowledging a family settlement arrived at between the parties. Such decree cannot be ignored by the Court only on the ground that it was not passed after contest. These decrees in common parlance are known as consent decrees. Such consent decree is nonetheless a valid decree of the Court.

Learned Counsel for the appellant has relied upon a judgement passed by the court in the case of *Shishpal and others versus Vikram 1999*

(1) Punjab Law Journal page 429.

The aforesaid judgment is only giving a word of caution that the Courts should not mechanically passed the decree. No doubt the Courts are not bound to pass the decree. However in the present case decree has been passed in the year 1985. Question now is whether such decree can be ignored by the Court once it has been passed by the competent Court of jurisdiction. The ground for setting aside a decree passed by the Court are very limited and plaintiff-appellant has failed to either plead or prove any of the ground.

Hence there is no ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous application(s), if any, is/are disposed of in terms thereof.

(ANIL KSHETARPAL)
JUDGE

October 11, 2018

shweta

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No