

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

**RSA No.2340 of 2018 (O&M)
Date of Decision:14.11.2018**

Chhinder Pal Kaur Dhaliwal

...Appellant(s)

Versus

Sony Takhur @ Tejinderpal Kaur Dhaliwal and others

...Respondent(s)

RSA No.2580 of 2018 (O&M)

Gulab Kaur and another

...Appellant(s)

Versus

Sony Takhur @ Tejinderpal Kaur Dhaliwal and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.B.S.Bhalla, Advocate for the appellant(s)

ANIL KSHETARPAL, J.

This order shall dispose of two appeals bearing RSA Nos.2340 and 2580 of 2018, as the issue involved therein is common.

These two appeals have been filed against the concurrent findings of fact arrived at by both the courts below.

The dispute in the case is with respect to the estate of Balbir Singh, who died on 28.1.1992. He was married having three children, who are the plaintiffs-respondents. However, the property of Balbir Singh was wrongly mutated in favour of his mother, excluding three children of Balbir Singh and thereafter Kartar Kaur, the mother of Balbir Kaur, suffered a decree in favour of defendants No.1 to 3. Defendants No.2 and 3 disputed

the marriage of Balbir Singh with Paramjit Kaur i.e. defendant No.5 and consequently the status of the plaintiffs, being children of Balbir Singh.

In order to prove their relationship, the plaintiffs have produced on file their birth certificates Ex.P13 to Ex.P15. No evidence has been led to controvert the correctness of the aforesaid birth certificates. Still further, decree of divorce between Balbir Singh and Paramjit Kaur has been proved on file.

Both the courts concurrently decreed the suit filed by the plaintiffs by holding that the mutation of land exclusively in favour of Kartar Kaur and decree suffered by Kartar Kaur in favour of defendants No. 1 to 3 is illegal only to the extent of the rights of the plaintiffs.

Learned counsel for the appellant(s) in both the appeals while referring to the judgment of the learned trial court has argued that only defendants No.2 to 4 had chosen to contest and defendants No.1 and 5 were proceeded against ex parte. Defendant No.1 is husband of Chhinder Pal Kaur, who claims to be wife of defendant No.1-Raghubir Singh. She had also filed first appeal which was decided on its merits. He has further argued that since no issue on the validity of the consent decree dated 20.9.1994 was framed by the learned trial court, therefore, it could not be set aside.

This Court has considered the submissions, however, find no substance therein.

The consent decree is only an agreement between the parties with a stamp of the court to that effect. Once the basis of the aforesaid decree ceases to exist and found erroneous i.e., the mutation, entered in favour of Kartar

Kaur exclusively, excluding other class 1 legal heirs, i.e. children, therefore, the consent decree dated 20.10.1994 would not affect the rights of the plaintiffs. Still further, the decree was specifically challenged by the plaintiffs and set aside by the court.

Defendants were granted opportunity to lead evidence but no evidence has been led to rebut the correctness of the stand taken by the plaintiffs. Even appeal filed by Chhinder Pal Kaur was not maintainable because her husband Raghbir Singh is admittedly alive and never chose to contest the suit.

In view of the above, there is no ground to interfere with the concurrent findings of fact arrived at by both the courts below. The regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

14.11.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No