

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

**RSA No. 3687 of 2017(O&M)**

**Date of decision: 14.5.2018**

Bhanti through her LRs

....Appellant

VERSUS

Sajjan Singh and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. O.P. Sharma, Advocate for the appellant.

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**REKHA MITTAL, J.(Oral)**

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration and permanent injunction filed by Sajjan Singh son of Ramji Lal was decreed by the trial Court and judgment and decree passed by the trial Court have been affirmed in appeal by the Additional District Judge, Bhiwani.

Counsel for the appellant Bhanti (since deceased) now represented by her legal representatives would argue, in line with plea in defence that Smt. Bhanti daughter of Sarja is entitled to 1/9<sup>th</sup> share in the land measuring 233 kanal 4 marlas out of 1/3<sup>rd</sup> share of Ramji Lal and 1/6<sup>th</sup> share out of 1/3<sup>rd</sup> share of Sheo Chand in the said land as Sarja was previously married to Ramji Lal and thereafter performed kareva marriage with Sheo Chand, therefore, she is entitled to land measuring 65 kanal 15 marlas as against 38 kanal 17 marlas. It is argued with vehemence that the judgment and decree passed in Civil Suit No.427 of 1976 titled Bhanti Vs.

Sajjan Singh etc, based upon compromise, is the result of fraud, therefore,

said judgment and decree cannot cause prejudice to rights of Smt. Bhanti to claim ownership of land measuring 65 kanal 15 marlas on the basis of mutation No.1020 as well as judgment and decree passed in Civil Suit No.163 of 1993 filed by Ramesh @ Rameshwar.

Indisputably, Bhanti filed the suit in the year 1976 on the basis of Will No.62 dated 21.08.1974. In the said suit, Sajjan Singh and Ramesh @ Rameswhar son of Ramji Lal were also a party. The suit was decided on the basis of compromise arrived at between the parties whereby Smt. Bhanti was held entitled to land measuring 38 kanal 17 marlas i.e. 1/6<sup>th</sup> share of total suit land. The said judgment and decree attained finality between the parties as were not challenged in appeal nor in any collateral proceedings on any ground whatever. Indisputably, fraud is a disputed question of fact that needs adjudication on the basis of evidence to be adduced by the parties. Not only this, plea of fraud is required to be proved akin to a criminal charge for committing fraud. As Smt. Bhanti never sought to assail judgment and decree passed in civil suit No.427 of 1976, she cannot be heard to say that she is entitled to land measuring 65 kanal 15 marlas as against her entitlement to 38 kanal 17 marlas allowed in civil suit No.427 of 1976. The Courts have rightly held that in the face of judgment and decree dated 20.11.1976 Ex.P1 and P2 respectively, Smt. Bhanti cannot claim right to land more than what she was held entitled to in the previous litigation.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay in re-filing the appeal is of academic relevance

yes/no