

RSA-5668-2017 (O&M)
Date of Decision: 26.07.2018

Janakbai

.....Appellant

Versus

Surender Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL**Present:** Mr. J.P. Sharma, Advocate
for the appellant.**DEEPAK SIBAL, J. (ORAL)**

The appellant filed a suit seeking therein declaration to the effect that she be declared owner in possession of the land detailed and described in the plaint (for short 'the suit property'). Decree dated 12.09.1977 passed in Civil Suit No.286 dated 09.09.1977 *qua* agricultural land bearing Khewat No.109 Khatoni No.152, total kita 10, total land 55 kanal 19 marlas situated in village Khod Tehsil Narnaul had also been challenged on the ground that the same had been obtained by playing fraud etc. Mutation No.1117 dated 27.01.1978 which had been entered on the basis of the aforesaid decree was also sought to be declared null and void.

The Trial Court after sifting the evidence led by the parties, dismissed the appellant's suit and her appeal filed against such dismissal also met the same fate as her suit giving her a cause to file the present second appeal.

Learned counsel for the appellant has been heard at length.

The case of the appellant hinges around the legality of the decree dated 12.09.1977 through which the appellant, her mother and her sister had given their share in favour of the appellant's brother-Bahadur Singh. Civil

Suit No.286 dated 09.09.1977 was filed by Bahadur Singh against his sister and mother seeking therein to be declared owner in possession of the suit property. Though in the suit, notice was issued to the defendants therein for 03.10.1977, on an application moved by the appellant and other defendants therein, the date of hearing of the suit was preponed to 09.09.1977 on which date the appellant, her mother and her sister appeared before the Trial Court and suffered statements admitting the claim made by Bahadur Singh. A written statement containing their signatures and thumb impressions was also filed. Accordingly, Bahadur Singh's suit declaring him as owner in possession of the suit property was decreed on 12.09.1977.

The record reveals that the Trial Court summoned the judicial file of the aforesaid civil suit filed by Bahadur Singh and only after satisfying itself, came to a categoric conclusion that no fraud had been played by Bahadur Singh.

Further, PW-3 Ramji Lal, Advocate who was the appellant's attorney in the aforesaid civil suit while appearing before the Trial Court admitted that he had filed his power of attorney in favour of the appellant and other defendants. He also admitted to the written statement filed through him and the statements made by the appellant and other defendants in the aforesaid civil suit bearing No.286 of 09.09.1977. He further went on to depose that the appellant and the other defendants in the aforesaid suit put their thumb impressions and signatures in his presence before the Court. Once the appellant's own witness has deposed as above, the entire case sought to be set up by the appellant falls to the ground.

It is the case of the appellant that she had given the suit property to her brother only for cultivation purposes and not for him to be declared

owner in possession of the same. Thus, she admitted her signatures and thumb impressions on the written statement filed on her behalf in response to Bahadur Singh's civil suit. The appellant had also made a statement before the Trial Court that she had no objection if the aforesaid suit is allowed. After about 30 years, she cannot be allowed to wriggle out of her aforesaid statement.

PW-10, Nasib Singh was produced by the appellant in support of her contention that she had given the property to her brother only for cultivation purposes but Nasib Singh's deposition needs to be ignored for the simple reason that at the time of his testimony in the present suit he was said to be 45 years of age and therefore, on 17.07.1972, when the appellant says that she had given her property to her brother, Nasib Singh would have had only six years of age. Further, Nasib Singh deposed that he had come to the Court for the purpose of deposition only on the asking of the appellant.

The issue of registration was not pressed.

In view of the above, the concurrent findings of fact arrived at by both the Trial Court as also the Appellate Court need no interference.

No question of law much less a substantial question of law arises in the appeal.

Dismissed.

26.07.2018

Neha

(DEEPAK SIBAL)
JUDGE

Whether Speaking/Reportable : Yes/No

Whether Reportable : Yes/No