

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-.-

RSA 5897 of 2017 (O&M)
Date of Decision: 17.10.2018

Balraj and others

.....*Appellants*

versus

Roopa and others

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. Rakesh Nagpal, Advocate
for the appellants

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration filed by successors-in-interest of Sawan alias Shawnu to claim 160/3152 share in land measuring 157 kanal 12 marlas by directing challenge against judgment and decree passed in civil Suit No. 1091 of 1989 dated 07.11.1989 purported to be suffered by Sawan alias Shawnu on the premise that the judgment and decree is the result of fraud and misrepresentation, was dismissed by the trial Court on 26.04.2014 and the appeal preferred by unsuccessful plaintiffs/appellants did not find favour with the Additional District Judge, Fatehabad whereby findings recorded by the trial Court were affirmed.

Counsel for the appellants would urge that civil suit No. 1091 of 1989 was instituted on 07.11.1989, written statement admitting claim of the plaintiffs therein (respondents herein) was filed on the same day.

Statement was also recorded on the same very day and suit was decreed on

07.11.1989, sufficient to substantiate plea of the appellants that the entire proceedings that culminated in judgment and decree dated 07.11.1989 are the result of fraud and misrepresentation. Another submission made by counsel is that Roopa, one of the defendants appeared in the witness box and in his cross examination, he had stated that there was no family settlement between the parties. It is vehemently argued that as right in immovable property valuing more than Rs.100.00 was created for the first time in favour of Roopa and others, decree dated 07.11.1989 cannot be held good for want of registration.

I have heard counsel for the appellants and perused the paper book particularly the judgments impugned.

The mere fact that proceedings in the suit instituted on 07.11.1989 were completed on the same very day *ipso facto* does not lead to a conclusion that judgment and decree dated 07.11.1989 is the result of fraud or misrepresentation. As per settled position in law, fraud is required to be proved akin to a criminal charge even if a plea in this regard is raised in civil proceedings. This apart, counsel for the appellants, in response to a query, would inform that predecessor-in-interest of the plaintiffs/appellants (JD) remained alive till 2009 and mutation on the basis of decree was sanctioned in 1989 itself but he never challenged the judgment and decree dated 07.11.1989 for a period of about two decades during his life time. The aforesaid fact goes a long way to negate plea of the appellants/plaintiffs that judgment and decree dated 07.11.1989 is not the result of free consent and volition of Sawan alias Shawnu much less the same is vitiated because of fraud or/and misrepresentation by beneficiaries under the decree.

Assuming that there was no family settlement between the defendants and Sawan alias Shawnu, the respondents/defendants are not stranger to family of Sawan alias Shawnu as they are real brothers of Sawan alias Shawnu. Once brothers have decided to transfer the property by way of consent decree, the appellants cannot be allowed to challenge the decree merely because the same is not registered.

The Courts have consistently rejected claim of the appellants/plaintiffs that the judgment and decree impugned is the result of fraud and misrepresentation. It is not open for the Court in second appeal to re-appreciate the evidence to interfere merely because another view is possible. Examined from any angle, the appeal is not meritorious and liable to be dismissed.

For the foregoing reasons, the appeal fails and is accordingly dismissed *in limine*. No order as to costs.

(Rekha Mittal)
Judge

17.10.2018
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