

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

133

RSA No.6277 of 2017 (O&M)

Date of decision: 07.09.2018

Rajinder and others

..... Appellants

Versus

Budh Ram (now deceased) through LRs
and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sandeep Panwar, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM-16381-C-2017

Application is allowed, subject to just exceptions. Legal heirs of Birmi Devi-appellant No.3 as mentioned in para No.3 of the application are brought on record for the purpose of defending the appeal only.

CM-16382-C-2017

Application is allowed, subject to just exceptions. Legal heirs of respondent No.1 as mentioned in para No.2 of the application are brought on record for the purpose of defending the appeal only.

Main Case

Plaintiffs-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while dismissing their suit for declaration and permanent injunction for possession.

Plaintiffs had challenged the judgment and decree passed by

the competent Court of jurisdiction dated 23.08.1976 by filing a suit on 08.10.2007. Although, the plaintiffs claim that the decree was result of impersonation, however, no reliable evidence was led.

Learned counsel for the appellants submitted that Jag Ram had no pre-existing right and therefore, the decree required registration. It is not in dispute that Jag Ram and Khilla Ram were real brothers being sons of Nathu.

For the purpose of family settlement, the word family is to be considered as a larger family rather than narrowing construing the same. Reference in this regard can be made to the judgment passed in RSA No.3433 of 1999 titled 'Uday Ram Vs. Ram Sarup and others'.

Next argument of learned counsel for the appellants is that the decree was passed within a short span i.e. on the same day. It would be noted that once the defendants concedes to the claim made in the suit, the Court is required to pass a decree under Order 12 Rule 6, CPC which provides that once it comes to the notice of the Court that there is an admission by the defendant and no triable issue arises, the Court is entitled to pass a decree there and then. Learned counsel for the appellants has relied upon a judgment passed by the Hon'ble Supreme Court in the case of Smt. Badami (deceased) by her LR Vs. Bhali, (2012) 11 SCC 574. He submitted that in view of the aforesaid judgment, the decree which was passed on the same day has to be set aside.

This issue in the context of the judgment which has been cited above has been considered by this Court in detail while deciding RSA No.5757 of 2016, decided on 14.05.2018. For the reasons stated in the aforesaid judgment, argument of learned counsel for the appellants has no

substance.

Still further, once no fraud or misrepresentation has been proved and the suit filed by the plaintiffs after a period of 19 years of the decree, hence, barred by time and it has been correctly dismissed by the Courts below.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

07.09.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No