

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

**RSA No.665 of 2017 (O&M)
Date of Order: 21.11.2018**

Saroj Kumari

..Appellant

Versus

Kharaiti Lal and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harsh Kinra, Advocate,
for the appellant.

Mr. Keshav Partap Singh, Advocate,
for respondent no.1.

Mr. Sudhir Rana, Advocate,
for respondent no.2.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below.

Plaintiff, who is claimed to be 88% disabled of hearing, has challenged a civil court decree passed acknowledging a family settlement on 16.01.1981 between the family members. Plaintiff now claims that the aforesaid family settlement is result of fraud.

Defendants contested the suit and pleaded that their predecessor-in-interest i.e. Ladha Ram had died when, except defendant no.1. i.e. Kharaiti Lal, all other children were minor. It was he who brought up all the children and got them married. With the intervention of mother and respectables, a family settlement was arrived at, whereby property was decided to have devolved upon two brothers namely Kharaiti Lal, defendant

no.1 and Ramesh Chand. This family settlement was acknowledged in two civil court decrees passed in Civil Suit Nos.687 of 1988 and 726 of 16.01.1981.

Both the courts after examining the evidence have found that there is no fraud and the plaintiff is not proved to be deaf and dumb in the year 1981 or 1988. The courts have further found that she had appeared in evidence along with her 2 other sisters namely Bimla and Kamlesh and made a statement in the court.

Learned counsel appearing for the appellant submitted that the appellant was admittedly uneducated and was suffering from incapacity in terms of Order 32 Rule 15 of the Code of Civil Procedure and therefore, the court was in error in passing a judgment on the basis of consent/admission without holding a judicial enquiry.

This court has considered the submission.

No doubt, the argument in the first blush appears to be attractive, however, on deeper scrutiny, the court does not find any substance therein. No evidence has been led to prove that plaintiff-appellant was of unsound or weak mind on the day she suffered decree dated 16.01.1981, which is the only one, challenged in the present litigation.

Learned counsel for the respondents has further brought to the notice of the court that the subsequent decree passed in the year 1988 was also challenged by another sister Veena Kumari in a separate round of litigation, but failed.

In the present case, plaintiff has failed to lead sufficient evidence in order to prove that the plaintiff was of unsound mind or suffering from mental weakness to such an extent, on the day decree was

passed.

No doubt, learned counsel for the appellant has proposed questions of law as stated in paragraph 6 of the grounds of appeal. However, in view of the fact that no substantive evidence has been led to prove that the case set up by the plaintiff was covered by Order 32 Rule 15 of the Code of Civil Procedure, no interference can be made with the concurrent judgments of the courts below.

Still further acknowledgment of a family settlement through a civil court decree is a well established norm in this part of the country and the courts always lean in favour of upholding a family settlement. Further plaintiff has not stepped into a witness box or produced evidence to support her case that on 16.01.1981 the court before passing a decree on the basis of admission was required to hold judicial enquiry as provided in law. Still further, there is a presumption of correctness of the court proceedings which was required to be rebutted by the appellant. Apart therefrom, the suit has been filed after a period of 28 years.

In view thereof, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

November 21, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No