

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

RSA No.631 of 2018 (O&M)

Date of decision : 20.07.2018

Mukesh and others

...Appellants

Versus

Dharam Singh (deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harkesh Manuja, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff through his legal heirs is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing the suit filed by the plaintiff for declaration and permanent injunction.

The plaintiff claims that the decree suffered by his father in favour of his other brother Vijay Pal dated 03.08.1992 and 01.04.1995 are illegal, wrong and, therefore, liable to be ignored.

Both the Courts below, on examination of the evidence have found that father Dharam Singh was owner of land measuring 40 kanals and 18 marlas and Dharam Singh had sold half of the aforesaid land and a part of the residential plot and transferred the entire consideration to the plaintiff pursuant to a family settlement. Ex.DX is an affidavit duly sworn by the plaintiff admitting this fact. The contents of this affidavit are further supported by the mutations which have been produced on file as Ex.P10 to Ex.P14 proving that

Dharam Singh had been selling the property in parts.

Learned counsel appearing on behalf of the appellant has submitted that the affidavit and the mutations are beyond pleadings. He has further submitted that no evidence has been produced to prove the affidavit sworn by the plaintiff-Ex.DX.

On careful reading of the pleadings, it is apparent that defendants have pleaded that there was a family settlement. The pleadings are required to contain facts only. The evidence is not required to be pleaded. Once the family settlement and distribution of the properties pleaded, the evidence in support thereof could be led. In such circumstances, this Court does not find any force in the first submission of the learned counsel.

With regard to the argument that the defendants have not led any evidence to prove the affidavit Ex.DX, it is to be noticed that the plaintiff when appeared in the evidence, admitted his signatures on the affidavit. Thereafter, it was the duty of the plaintiff to explain as to how his signatures appeared on the file which is attested by the Executive Magistrate while he was identified by Lambardar of the Village.

In these circumstances, this Court does not find any good ground to interfere with the concurrent findings of fact.

Regular Second Appeal is dismissed.

20.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No