

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

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RSA 671 of 1998 (O&M)
Date of decision: 10.09.2019

Sunder through Lrs

.....Appellant

Versus

Tara Chand through LRs and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Tribhuwan Dahiya, Advocate
for the appellant

None for the respondent

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Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration to challenge judgment and decree dated 16.12.1993, Ex.P6 and Ex.P7 passed in favour of respondents/defendants Tara Chand etc. in respect of suit land claiming right in the suit property being daughter of Chhotu, father of the appellant was dismissed by the trial Court vide judgment and decree dated 13.10.1997 and appeal preferred by unsuccessful plaintiff/appellant was also dismissed by the Additional District Judge, Sonapat vide judgment and decree dated 05.02.1998.

Counsel for the appellant would argue that as the appellant being daughter of Chhotu had a pre existing right in land owned by Shri Chhotu, therefore, Chhotu was not competent to suffer decree dated 16.12.1993 which caused prejudice to right of the plaintiff/appellant. It is

further argued that even Chhotu filed an application under Section 151 of the Code of Civil Procedure Ex.P1 for setting aside the decree aforesaid but the same was dismissed on 09.01.1996 (Ex.P3) as Chhotu died on 10.10.1995 during pendency of the said application. In support of his contention, he has relied upon judgment of this Court ***Mam Chand vs Sahib Devi 2000 (2) R.C.R. (Civil)707.***

I have heard counsel for the appellant, perused the impugned judgments and records but find that the appeal sans merit and deserves to be rejected.

Both the Courts have consistently held that judgment and decree dated 16.12.1993 in respect of 1/3rd share in land measuring 88 kanals 10 marlas of Chhotu was passed on the basis of consent recorded by said Chhotu. The respondents/defendants are children of brothers of Chhotu namely Ratti Ram and Balak Ram. The appellant is the married daughter of Chhotu and she filed the suit through her son Rohtash son of Kehar Singh. Chhotu did not have a son. There is no evidence adduced by the appellant that the suit land was ancestral coparcenary property in which she could claim her share, even in view of amendment made in Section 6 of the Hindu Succession Act, 1956 though the said amendment came in force in the year 2005, a long after decree dated 16.12.1993 was passed. As such, she cannot even claim any right by taking advantage of that amendment as the same would not affect the transfer that already took place prior to December 2004.

Once Chhotu had suffered a consent decree, the same will hold good in the eye of law till set aside by taking recourse to appropriate proceedings before the Court concerned. In the instant case, Chhotu filed

an application under Section 151 of Code of Civil Procedure but the same was dismissed for non-prosecution. The appellant being Class I heir of the deceased could pursue her remedy seeking restoration of such application and its decision on merit but she failed to do so. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the Courts.

So far as reliance upon judgment in *Mam Chand's* case (supra) is concerned, the respondents/defendants were not strangers to family of Chhotu. They are the children of brothers of Chhotu and land was co-owned by Chhotu and his brothers. In the given circumstances, contention of the appellant that the impugned decree cannot hold good for want of registration is also not tenable. Examined from another angle, if Chhotu could not assail the impugned judgment and decree for want of registration, the appellant claiming her right through Chhotu possibly cannot challenge the decree on the ground of non-registration. In this view of the matter, the appellant cannot derive any advantage to her contention from the referred authority.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed.

(Rekha Mittal)
Judge

10.09.2019
Mohan Bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No