

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

RSA No.2263 of 2004 (O&M)

Date of decision : 15.02.2019

Ram Kishan Singh

...Appellant

Versus

Bant Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K. Jain, Advocate for the appellant.

Mr. L.S. Sidhu, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court decreeing the suit filed by the plaintiffs challenging judgment and decree dated 23.04.1994 suffered by their mother in favour of one of her son.

In the considered view of this Court, following substantial questions of law arise for determination by this Court:-

- 1) Whether a judgment and decree passed by the Court acknowledging prior family settlement requires registration particularly when the consent decree is with regard to the property involved in the suit?
- 2) Whether children after having separated from the family can continue to claim to be members of the same family for the purpose of defeating a subsequent family settlement arrived at between mother

and son?

Both the Courts have concurrently found that the plaintiffs have failed to prove that the judgment and decree was result of impersonation. There is no further appeal against the aforesaid finding. Plaintiffs as well as defendants are children and grand children of Smt. Nihal Kaur. It has come in evidence that the family had separated and at the time of consolidation, each one was allocated separate portions of the property. The daughters who are plaintiff Nos.3 to 5 were married long back.

Learned First Appellate Court has reversed the judgment of the trial Court on two grounds:-

- a) Judgment and decree dated 23.04.1994 was required to be registered.
- b) Other members of the family were not joined at the time of family settlement.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

As regards first reason given by the trial Court, it may be noted that the judgment and decree dated 23.04.1994 is acknowledging a prior family settlement which took place between the parties to the suit. Such decree does not require registration. This issue has already been decided by this Court in the case reported as *2017(4) PLR 729, titled as Dhian Singh and others Vs. Mohinder Singh and others*. Hence, no further discussion on this aspect is required.

As regards second reason given by the trial Court, it may be noted that both the Courts have found that Smt. Nihal Kaur, at the time of

consolidation of holdings in the year 1968-69 and thereafter, separated all the children and allocated separate parcels of land to male members whereas daughters were married and settled in their in-laws family. It has also come in evidence that Ram Kishan use to stay with her mother Smt. Nihal Kaur which fact is not disputed by the plaintiffs. It has also come in evidence that Ram Kishan (defendant No.1-appellant) had suffered injury which resulted into chopping of his arm. It has also come in evidence that leg of wife of the appellant is polio affected. In such circumstances, mother has chosen to give her share in the property by way of family settlement to his son. Once, the family had separated, the plaintiffs cannot claim that they continue to be members of the joint hindu family at the time of family settlement which is pleaded and accepted by the mother resulting into judgment and decree dated 23.04.1994. Thus, on both counts, judgment passed by the learned First Appellate Court is erroneous.

Accordingly, judgment of the First Appellate Court is set aside and that of the trial Court is restored.

Both the questions of law as framed earlier are answered in favour of the appellant and against the respondents.

In view thereof, the present Regular Second Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

15.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No