

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.405 of 2006 (O&M)

Date of decision: 05.03.2019

Hoshiar Singh and others

..... Appellants

Versus

Budh Parkash and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. R.P.S. Ahluwalia, Advocate and
Mr. Mayank Bansal, Advocate
for the appellants.

Mr. B.R. Mahajan, Sr. Advocate with
Ms. Surabhi Kaushik, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below dismissing the suit filed by the plaintiffs for declaration challenging the judgment and decree dated 13.06.1994 passed on the consent of grand-father/Raja Ram acknowledging a prior family settlement through which he has acknowledged that his share of the property had fallen to the share of his grand-sons.

The plaintiffs claimed that the property is joint Hindu family ancestral co-parcenary property. However, when he appeared in evidence, he admitted that the property of the family was divided in 4 shares and three shares were given to Hoshiar Singh, Roop Singh and Sarb Singh, the three sons and 4th share was kept by Raja Ram for himself.

Learned counsel appearing for the appellants submitted that even if the property no longer remained joint Hindu family ancestral coparcenary property after division, still the share which was left with Raja Ram was his own property and hence, it could not be transferred in favour of grand-sons by way of consent decree. He relied upon a judgment passed by the Hon'ble Supreme Court in the case of Phool Patti and another Vs. Ram Singh (Dead) through LRs and another, 2016(1) PLR 36.

At the time of admission, the following question of law was framed:-

“Whether defendant No.3 Raja Ram could suffer a consent decree in favour of defendants No.1 and 2 in respect to his entire 1/4th share in the total holding?”

The argument being raised by learned counsel for the appellants is covered by a detailed judgment of this Court in the case of Dhian Singh and others Vs. Mohinder Singh and others, 2017(4) PLR 729.

It is well settled that a consent decree acknowledging a prior family settlement does not require registration. In the present case, the grand-sons namely Budh Parkash and Sanjiv Kumar while filing the suit had pleaded a prior family settlement which was of course oral. Raja Ram, the grandfather had filed the written statement admitting the assertions made in the plaint and suffered a statement to that effect.

In view of Order 12 Rule 6, Civil Procedure Code, 1908 once the parties were not at issue, the decree was passed. No doubt, after division of the family members, larger family separated, however, that itself would not mean that there cannot be any further family settlement between the members who were not part of the previous family settlement. The acknowledgment of a family settlement amongst Hindus is common and

well recognized by the Hon'ble Supreme Court in series of judgments which has been noticed in Dhian Singh's case (supra). The judgment which has been referred to by learned counsel for the appellants has also been noticed and explained.

In view of the detailed reasons recorded in the case of Dhian Singh, there is no ground to interfere.

Appeal is dismissed.

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There is an application for additional evidence. Counsel for the respondents has pointed out that three documents i.e. plaint, written statement and decree sheet are already part of the record of the trial Court, therefore, no application for additional evidence to produce the documents which are already part of the record, can be filed. As regards first three documents i.e. Annexures P-1, P-2 and P-3. The document P-1 is an application for taking up the case filed in the previous suit, second P-2 for getting the copy and P-3 is the report thereof. Those documents would have no relevance for the decision of the present case.

Hence, the application for additional evidence is dismissed.

05.03.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No