

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

**RSA No.3929 of 2016 (O&M)
Date of Decision.04.04.2019**

Hom Singh (deceased) through LRs

...Appellant

Vs

Hawa Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Dr. Praveen Hans, Advocate
for the appellant.

-:-

AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the concurrent finding of fact whereby suit of the appellant-plaintiff claiming declaration of ownership by challenging the judgment and decree dated 4.5.1974 has been dismissed by the trial Court and affirmed in appeal.

Hom Singh when he was alive instituted suit in the year 2009 challenging the decree allegedly suffered by him in favour of respondents-defendants on the ground of fraud, misrepresentation and impersonation as he never appeared and suffered any statement in those proceedings.

Defendants appeared and contested the suit by raising objections of court fee, limitation, estoppel etc. On merit, it was claimed that Ram Lal was the common ancestor of the parties and after death of Ram Lal, his land was inherited by Hem Raj and Sheo Narain, predecessor-in-interest of defendants. The land was to be divided between two sons in equal shares but due to clerical error, Hem Raj inherited two acres in excess but later on in family

settlement gave that two acres of excess land to the predecessors of defendants and that family settlement was enforced by filing civil suit No.94 of 1974.

Since the parties were at variance, the trial Court framed following issues:-

“1. Whether the plaintiff is entitled for decree of declaration as prayed for in the heading of the plaint?

OPP

2. Whether the plaintiff is entitled to for decree of permanent injunction as prayed for in the headnote of the plain? OPP

3. Whether the suit is not maintainable in the present from? OPD

4. Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD

5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD

6. Relief.”

The plaintiff in support of evidence examined himself and brought on record Ex.P1 and P2 i.e. impugned judgment and decree and closed evidence. On the other hand, defendants examined four witnesses and brought on record Ex.D1 to D29 i.e. the revenue record along with application for partition of suit property and khasra girdawari.

Mr. Praveen Hans, learned counsel appearing on behalf of the appellant submitted that the only reason assigned by the Courts

below in non suiting the plaintiff was non-examination of the expert for proving the alleged fraud, misrepresentation and impersonation. Previous plaint reflected the property to be joint whereas the partition had already been effected on 14.06.1953. Hem Raj did not suffer any separate statement than the written statement which had two thumb impressions. The aforementioned evidence sufficed the requirement of provisions of Order 6 Rule 4 CPC.

I am afraid aforementioned argument is not sustainable as on perusal of record of Courts below, it is established that there were two thumb impressions on written statement. Order 12 Rule 6 CPC recognizes judgment on the basis of admission. In such circumstances, separate statement would not be of that importance. No explanation has come forward for not assailing the aforementioned decree from 1974 till 2009, as the suit was filed in May, 2009. Hem Raj expired during the pendency of suit. The ingredients of fraud in such circumstances remained unproved.

The other argument raised during the course of hearing was that it required registration, as defendants did not have any pre-existing right. The aforementioned argument is also not sustainable as perusal of plaint of previous suit No.94 of 1974 recognizes family settlement. The decree was not *in praesenti* in view of the ratio decidendi culled out by Hon'ble Supreme Court in **Phool Patti and another Vs. Ram Singh (dead) through LRs and another (2015) 3 SCC 164.**

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by

the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 04, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No