

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

**RSA No.6829 of 2016 (O&M)
Date of decision:03.04.2019**

Modan Singh

... Appellant

Vs.

Balbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Naresh Kumar Manchanda, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.17793-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 42 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.6829 of 2016 (O&M)

The present regular second appeal is directed against the the concurrent findings of fact and law whereby suit of the appellant-plaintiff claiming the ownership by way of joint possession by laying challenge to the consent decree dated 24.10.1992 executed by mother Bhagwanti and sister in favour of defendant no.1, brother, has been dismissed by the trial Court and affirmed in appeal.

It was alleged that there was a family settlement dated 08.07.1983, Ex.PX amongst the family members settling that after the demise of mother, her share would devolve upon all the three sons thus there was fraud and mis-representation as she admitted the execution of consent decree.

The defendants opposed the suit and explained that suit was not maintainable and it was an act of greed. Even the death of mother was not disclosed in the plaint, though allegedly died on 27.07.1997. Both the parties led extensive evidence in support of the pleadings and stand.

Mr. N.K.Manchanda, learned counsel appearing on behalf of the appellant submitted that once there was already family settlement which has been proved through the defendants, there was no occasion for the Courts below to uphold the consent decree which was totally deviation and also required registration. The aforementioned two legal objections have not been addressed in correct perspective, therefore, there is perversity.

I have heard the learned counsel for the appellant, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Manchanda, for, beneficiary of the consent decree, is son, who has pre-existing right and therefore the ratio decidendi culled out in **Bhoop Singh vs. Ram Singh Major 1995(3) RRR 541** reiterated by the Hon'ble Supreme Court in **Phool Patti and another vs. Ram Singh (dead) through LRs and another 2015(1) RCR (Civil) 606** would not come to the rescue of the plaintiff. The family settlement

could be effective after the demise of Bhagwanti but after the family settlement she remained alive for almost five years and during her life, did not lay any challenge to the consent decree till her last breath. The present suit was filed on 04.05.2010. No explanation has come forth in not filing the suit with promptitude.

As an upshot of my findings, arguments of Mr.Manchanda, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 03, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No