

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

RSA No.2200 of 2017 (O&M)

Date of decision:15.01.2019

Rakha Singh (now deceased) through LRs ... Appellant

Vs.

Tulsa Singh (now deceased) through LRs and others
... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. H.S.Diwana, Advocate and
Mr. Arvind Kashyap, Advocate
for the appellant.

Mr. Rakesh Chopra, Advocate
for the caveator/respondent(s).

AMIT RAWAL J. (Oral)

C.M.No.5347-C-2017

The application is allowed, subject to all just exceptions. Legal representatives of respondent No.1 -Tulsa Singh as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

RSA No.2200 of 2017 (O&M)

The present Regular Second Appeal is directed against the concurrent findings of facts and law, whereby, appellant-plaintiff has not been successful in claiming declaration of ownership in joint possession of suit property qua share of Lachhman Singh son of Albel Singh son of Ramu.

It was asserted that Albel Singh had three sons Tulsa, Lachhman Singh and Rakha Singh and one daughter Charan Kaur. During the life time of Rakha Singh and Tulsa, sons of Tulsa instituted the civil suit against Lachhman Singh, who was un-married and issueless, and obtained the compromise decree dated 07.05.1986. Tulsa died in the year 1993 and on acquisition of the knowledge with regard to aforementioned decree in the year 2004, a suit was filed as partition proceedings were initiated in the year 2002. It was also alleged that decree required registration.

Defendants no.1, 3 to 5, 8 to 12 filed the separate written statement, contested the suit by supporting the decree. Factum of registration was denied. The suit was stated to be barred by law of limitation. An application submitted by the defendants for correction of khasra girdawari was allowed by the Assistant Collector II Grade. The appeal filed by the plaintiff before SDM was dismissed and confirmed the possession of the answering defendants. The litigation was stated to be outcome of malafide intention and frustration. The plaintiff himself filed an application for correction of khasra girdawari before the AC II Grade, Fatehgarh Sahib which was dismissed on 18.10.2004 and appeal on 21.06.2005. Lachhman Singh during his life time did not challenge the decree till 1994 therefore there was no element of fraud and misrepresentation.

Since the parties were at variance, the trial Court framed as many as 8 (eight) issues including the issue of Relief. The plaintiff in support of the aforementioned averments examined three witnesses and

brought on record Ex.P1 to Ex.P8, whereas, defendants examined four witnesses including the expert and brought on record the various documents i.e. Mutation Ex.DW8/A. On the basis of the evidence, the trial Court dismissed the suit and the appeal was also dismissed.

Mr. H.S.Diwana and Mr. Arvind Kashyap, learned counsel appearing on behalf of the appellant in support of the memorandum of appeal have raised the following submissions:-

The consent decree executed by Lachhman Singh dated 7.5.1986 required registration. In support of aforementioned contention relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Phool Patti and another Vs. Ram Singh (dead) through LRs and another 2015(3) SCC 164.**

Both the Courts below did not advert to the contents of the statements reflected in Ex.D1 to Ex.D5. A fraud was played upon Lachhman Singh who did not know the intricacy of law. Rakha Singh and Tulsa were co-laterals, who had prior right to succeed the estate of Lachhman Singh son of Tulsa. The suit was filed as per the provisions of Article 59 of Limitation Act, 1963, as Article 58 of Limitation Act, would not be attracted.

I have heard the learned counsel for the appellant, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr.Diwana. It has not been proved on record whether the suit property was ancestral or self acquired. On plain and simple reading of Ex.D4, it was not a consent decree but compromise dated 07.05.1986. This fact was not controverted

during the course of hearing. In such circumstances, ratio decidendi culled out in the judgment cited supra requiring the registration of case on consent decree with regard to self acquired property would not apply. It is a common practice amongst the litigants to claim fraud upon the deceased person who during his life time did not take any steps. For almost 08 years, Lachhman Singh was alive and did not lay any challenge. The suit could not have been said to be filed within a period of limitation under Article 59 of Limitation Act but under Article 58. In view of the decree, mutation was rejected and the parties were in respective possession.

No ground for interference is made out.

The appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 15, 2019
savita

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