

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

**RSA No.5938 of 2017 (O&M)
Date of Decision.08.05.2019**

Mahender Singh and another

...Appellants

Vs

Raj Kumar and another

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Panwar, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the impugned judgments and decrees of Courts below whereby the appellants-plaintiffs have not been successful in claiming declaration to be in joint owner and possession of the suit land bearing Khewat/Khatoni No.86/89, Rect. No.47, Killa No.11/3(1-12) and Khewat/Khatoni No.87/90, Rect. No.47 Killa No.11/1(1-15) measuring 3 kanals 7 marlas situated within revenue estate of Village Chajjunagar, Tehsil and District Palwal on the premise that defendant No.2 was lessee in possession for 99 years to the extent of half of the land bearing Khewat/Khatoni No.88/91, Rect. No.9, Killa No.24/1/2 (1-17), 24(1-6), Rect. No.14, Killa No.4(3-10), Rect. No.39, Killa No.17/1(5-0) total measuring 11 kanals 13 marlas situated in the revenue estate of Chajjunagar, Tehsil and District Palwal.

Defendant No.2 father of the plaintiffs was owner in possession of property No.1 as per the Award of the Lok Adalat dated 09.10.2007 rendered in case No.445 of 2007. In such circumstances, plaintiffs became owners in possession of the property. Defendant

No.1 asserted his right as son of defendant No.2 though he was born after several years of death of Nathi, the late husband of Sohan Dei, mother of defendant No.1. He was fathered by some unknown person. Civil Suit No.266 of 2008 with regard to property No.1 and 2 was filed by defendant No.1 claiming himself to be son of defendant No.2 and obtained decree dated 6.8.2011. The judgment and decree dated 6.8.2011 was challenged on the ground that defendant No.2 had no authority after the award of Lok Adalat dated 9.10.2007 and the same was obtained by fraud.

Defendant No.1 opposed the suit by raising various preliminary objections and stated that award of the Lok Adalat had become redundant in view of the compromise arrived at in the judgment and decree dated 6.8.2011, in essence, effect of the award of the Lok Adalat dated 09.10.2007 effaced whereby some part of the land was given by defendant No.2. The suit was also stated to be not maintainable.

Learned counsel appearing on behalf of the appellants submitted that the decree was obtained by fraud and the same was not having binding effect upon plaintiffs and defendant No.2. In such circumstances, plaintiffs could not have been non-suited as they acquired right by way of award.

I am afraid aforementioned argument would not be sustainable, for, the effect of compromise and judgment and decree dated 6.8.2011 was reflected in the revenue record. Once there is already a finding, it cannot be held that defendant No.1 was not son of defendant No.2, whose mother is stated to have performed *kareva*

marriage, allegedly through the testimony of a villager. Be that it may, without commenting upon the factum of marriage, it is matter of record that award of Lok Adalat dated 9.10.2007 in respect of property No.2 conferring ownership in favour of defendant No.2 no longer remained in force. The compromise conferred ownership qua property No.1 and 2 in favour of defendant No.1 and the same cannot be permitted to be re-agitated by filing civil suit.

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

May 08, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No