

RSA-6072-2017 (O&M)

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

**RSA-6072-2017 (O&M)
Date of decision : 28.05.2019**

Gurnam Singh

... Appellant

Versus

Ram Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Verma, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The present regular second appeal, at the instance of the appellant-plaintiff, is directed against the concurrent findings of fact, whereby the suit for declaration challenging the judgment and decree dated 30.04.2005 passed in Civil Suit No.426 of 2004 titled as “Ram Kumar V/s Krishan Lal”, in respect of land, in dispute, with consequential relief of permanent injunction, has been dismissed by the trial Court and affirmed in appeal.

The plaintiff-Gurnam Singh instituted the suit by challenging the aforementioned decree as the nature and character of the property being ancestral, claimed 1/6th share. It was alleged that Krishan Lal, his father, had three sons, Gurnam Singh-plaintiff, Ram Kumar & Karam Chand/defendant Nos.1 & 2 and three daughters, Salochna Devi, Sudesh and Jaswinder/defendant Nos.3 to 5. Defendant Nos.1 and 2, having mala

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fide and dishonest intention, filed the suit against the father for declaration to be exclusive owner in possession to the extent of half share over the suit land situated in Village Bilaspur and Kakroni, on the basis of the oral family settlement, but the interest of the plaintiff was not taken care of. Judgment and decree, thus, was liable to be set aside as it was also required registration. There was no family settlement nor the property was self acquired.

Defendant Nos.1 and 2 opposed the suit by denying the character and nature of the property to be ancestral and stated to be self acquired property and propounded the family settlement and decree to be in recognition thereof, thus, claimed exclusive owner in possession.

In support of the pleadings, the plaintiff examined two witnesses and brought on record Ex.P1 to Ex.P8, whereas the defendants examined four witnesses and brought on record Ex.D1 to Ex.D14.

Mr. Verma, learned counsel appearing on behalf of the appellant-plaintiff submitted that in case, the appellant-plaintiff had not been able to prove the nature and character of the property to be ancestral, decree, impugned, in respect of self-acquired property in favour of other brother, requires registration as he did not have pre-existing right nor it was recognition in past agreement. The Courts below have not taken into consideration that aspect.

I am afraid the aforementioned argument is not sustainable as the decree acknowledged the factum of previous family settlement, therefore, it was not *in praesenti* and did not require registration. The law with regard to registration of decree as per the judgment rendered by Hon'ble Supreme Court in **Bhoop Singh Vs. Ram**

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Singh Major 1995(5) SCC 709 has been affirmed by holding to be not ambiguous in judgment rendered in **Phool Patti and another Vs. Ram Singh (dead) through LRs and another (2015) 3 SCC 164** reiterating that any transfer *in praesenti* and not recognition of the past act, required registration as per the provisions of Registration Act.

Keeping in view the aforementioned facts, I do not subscribe to the submissions of Mr. Verma, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground is made out for interference.

The applications seeking condonation of delay in filing and re-filing the appeal are bereft of any reasonable or justifiable explanation.

Resultantly, the second appeal is dismissed on merits as well as on the ground of limitation.

28.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**