

RSA-6355-2017 (O&M)

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

RSA-6355-2017 (O&M)

Date of decision : 28.05.2019

Krishna

... Appellant

Versus

Kartar Singh (deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Saurabh Bajaj, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-16523-C-2017

For the reasons stated in the application, which is supported by an affidavit, delay of 31 days in re-filing the appeal is condoned.

CM stands disposed of.

MAIN CASE

The appellant-plaintiff has not been successful in seeking declaration by challenging the decree dated 27.07.1993 in Civil Suit No.464 of 1993 titled as “Kartar Singh V/s Smt. Krishna” with consequent relief of permanent injunction.

It was alleged that the defendant was the owner in possession of the suit land to the extent of 1/12th share in agricultural land, described in the suit. Kartar Singh, brother, filed the suit against Krishna, appellant herein. In fact, she was never served nor made any statement and on the

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basis of the admitted written statement, her share was obtained by playing fraud and sought the injunction regarding sale and mortgage. She stated herself to be illiterate lady and acquired the right in the property, on demise of her father Ran Singh. There was no pre-existing right in favour of the defendants. The question of suffering a decree without registration did not arise.

The defendants opposed the suit and stated that Ran Singh died intestate on 23.03.1991. He was survived by widow, one son Kartar Singh and two daughters, Krishana and Kartari Devi. In 1993, a family settlement in respect of the moveable and immovable properties had taken place. Patori Devi, mother, transferred her share in favour of Rajesh Kumar, vide judgment and decree dated 27.07.1993 in a Civil Suit No.466 of 1993 and plaintiff Krishna, vide judgment and decree, impugned. In the year 2008, in pursuance to the family settlement, Kartari Devi and four daughters transferred their share in favour of Rajesh Kumar and Rahul. After demise of Ran Singh, Kartar Singh had been cultivating the land and after his death, his sons Rajesh Kumar and Rahul. The plaintiff was married 35 years ago and residing at her in-laws house and never remained in possession of the suit property. The objection qua limitation was also taken.

The plaintiff in order to support the pleadings, examined six witnesses and brought on record Ex.P1 to Ex.P11, whereas the defendants examined four witnesses and brought on record numerous documents.

Mr. Saurabh Bajaj, learned counsel for the appellant submitted that there is no limitation for assailing the judgment and decree obtained by fraud. Decree also requires registration as it had conferred the right in favour of the defendant, for the first time, in respect of property, having

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value more than ₹100/-. The plaintiff had acquired right and interest, in the property, on demise her father along with the other siblings.

I am afraid the aforementioned argument is not sustainable, for, on going through the decree and the copy of the plaint shown to this Court, during the course of hearing, it is found that there is categoric assertion in para 3 that there was family settlement-cum-partition of the suit property. Decree, thus, cannot be said to be *in praesenti* and require registration. It was recognition in past act. The law with regard to registration of the transfer deed and decree as per the judgment rendered by Hon'ble Supreme Court in **Bhoop Singh Vs. Ram 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. Bajaj, 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.

Resultantly, the second appeal is dismissed.

28.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No