

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

**RSA No.947 of 2018(O&M)
Date of Order:13.03.2019**

Rajender

..Appellant

Versus

Victor Prashad and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None.

ANIL KSHETARPAL, J(Oral)

Counsel for the appellant has not come present, although, called twice. Hence, this court is left with no choice but for to read and decide.

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below decreeing the suit for declaration with consequential relief of permanent injunction filed by the plaintiffs.

In this case, a sale deed was executed in favour of Gopi Ram, although, it was claimed that the property was purchased from Joint Hindu Family funds and, therefore, Gopi Ram was only entitled to 1/4th share but he got recorded sale deed in his favour only excluding his 3 brothers Ramautar, Shiv Kumar and Purshottam Chand. Ramautar, Shiv Kumar and Purshottam Chand filed Civil Suit No.29 of 1977 claiming that they are also co-owners in the property. The aforesaid suit was decreed on 10.02.1977 and it was declared that 3 brothers Ramautar, Shiv Kumar and Purshottam

Chand are owners to the extent of 3/8th share whereas Gopi Ram is owner to the extent of 1/8th share as through the sale deed ½ share in the property measuring 18 kanals and 4 marlas was purchased.

Plaintiffs, who are successor-in-interest of Purshottam Chand, who in the meantime had died have filed this suit claiming that the judgment and decree dated 10.02.1977 has not been properly implemented in the Court.

Defendants no.1 to 5 and 11 who are successor-in-interest of Gopi Ram claimed that the judgment and decree dated 10.02.1977 is result of fraud.

Both the courts on appreciation of evidence have found that the defendants have failed to prove that the judgment and decree dated 10.02.1977 is result of fraud.

In the grounds of appeal, following substantial questions of law have been proposed:-

- “(i) *Whether the findings recorded by the lower courts below is in derogation to the evidence on record, pleadings and written statement?*
- (ii) *Whether the present appeal involves substantial question of law?*
- (iii) *Whether grave and manifest injustice has been caused to the present appellants/defendants?*
- (iv) *Whether the impugned judgment and decree are liable to be set aside and reversed in view of the perverse, unsustainable and illegal findings given by the Ld. Courts below?”*

It is apparent that the questions of law as proposed are not substantial questions of law. Still further the judgment and decree dated 10.02.1977 was never challenged by Gopi Ram or his successor but for contesting the present litigation. The present suit was filed in the year 2008. Correctness of judgment and decree dated 10.02.1977 was not challenged during intervening period of 31 years. Still further defendants have failed to substantiate their plea of fraud.

Hence, there is no ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

March 13, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No