

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

1. RSA-1665-2009(O&M)

Capt. Jangbir Singh

.....Appellant

Versus

Ombir Singh and others

.....Respondents

2. RSA-1703-2009(O&M)

Geeta and others

.....Appellants

Versus

Ombir Singh and others

.....Respondents

Date of decision: 22.01.2020

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. P.R.Yadav, Advocate for appellant
in RSA-1665-2009
Mr.Hemender Goswami, Advocate for the appellants
in RSA-1703-2009
Mr. P.L.Verma, Advocate for the respondents

ANIL KSHETARPAL, J. (ORAL)

By this order two Regular Second Appeals i.e. RSA-1665-2009 and 1703-2009 arising from a common judgment passed by learned Trial Court as well as First Appellate Court shall stand decided. Plaintiff-appellant in RSA-1665-2009 filed a suit for declaration claiming that the decree passed on 21.8.1995 in favour of defendant No.1 against late Sh. Attar Singh (father of plaintiff and grandfather of defendant No.1) is illegal, null and void. The decree passed by the Court on 21.8.1995 was challenged on two grounds:-

i) The property in question is ancestral coparcenary

property and therefore, Attar Singh had no right to suffer the decree.

ii) Attar Singh never appeared in the Court to sign/thumb mark vakalatnama, written statement and therefore, the decree is result of impersonation.

Learned Trial Court decreed the suit while returning a finding that the property is ancestral coparcenary property as admitted by DW2. The Trial Court further returned a finding that since defendant No.2 has admitted that Attar Singh was confined to bed, therefore, he did not appear in the Court.

Learned first Appellate Court on re-appreciation of evidence reversed both the findings of the learned Trial Court. The first Appellate Court held that on careful examination of jamabandi for the years 1964 to 1994-1995, Ex. P-1 to P-7, it is apparent that Attar Singh was recorded to be in possession of the suit land as mortgagee under Smt. Chironji. Attar Singh became owner as the mortgagor failed to redeem the mortgage. Thus, Attar Singh became owner for the first time only in the year 1983. On the basis of the aforesaid finding the Court held that the alleged admission of Jagpal DW-2 is not only incorrect but against the facts established on the file. Therefore, the land in dispute is not proved to be joint Hindu Family coparcenary property.

Learned first Appellate Court further found that the Trial Court has erred in recording finding that Attar Singh had never appeared and put signatures on the vakalatnama and the written statement in the previous suit resulting in the decree in the year 1985. The Court held that Attar Singh remained alive upto 1992 and statement of DW2 to the effect that Attar Singh was confined to bed from 1983 till his death in 1992 is

not sufficient to hold that Attar Singh did not appear in previous suit and suffered statement admitting the claim of the plaintiff in that suit. It may be noted here that the plaintiff did not produce reliable evidence to prove that the vakalatnama or the written statement filed in the previous suit was not signed or thumb marked by Attar Singh. The Court held that the learned Trial Court erred in recording a finding merely on the basis of statement of DW2-Jagpal.

The first Appellate Court further found that learned Trial Court has erred in recording a finding that the decree passed by the Civil Court, which is normally called a consent decree passed under Order 6 Rule 12 CPC, requires registration. The Court held that the consent decree passed by the Civil Court, acknowledging a family settlement, does not result in creation of title for the first time through a decree and therefore, does not require registration.

This Court has heard learned counsel for the parties at length and with their able assistance has gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellant submitted that the first Appellate Court has committed an error while reversing the judgment of the learned Trial Court. He further submitted that the first Appellate Court has overlooked that the land was mortgaged with predecessor-in-interest of Attar Singh who had inherited the mortgagee rights from his father. Hence, he submitted that since Attar Singh had received the property, therefore, even if Attar Singh had become owner on account of non-redemption of the mortgage, still the property would be ancestral.

This Court has considered the submissions, however, finds no merit therein. It is not in dispute that Attar Singh became owner of the property for the first time. The predecessor-in-interest of Attar Singh was never owner of the suit property. The mortgagee does become owner of the mortgaged property on account of default on the part of the mortgagor to redeem the land from the date the mortgage was created. The mortgagee would become owner of the property for the first time only when ownership rights are conferred. In such circumstances, it is Attar Singh who became the owner of the property.

As regard Civil Court decree it may be noted that Attar Singh had not only signed vakalatnama, filed admitting written statement but also appeared in Court and suffered statement admitting the claim of Ombir, his grandson who was minor on that day. His statement is part of the record. The plaintiff has not produced reliable evidence to prove that Attar Singh did not appear in evidence.

Further, it is now well settled that consent decree passed by the Court is a valid decree and does not require registration, if the parties have acknowledged a prior family settlement. There is no creation of right in the immovable property, for the first time. Reference in this regard can be made to detailed judgment passed in 'Dhian Singh and others vs. Mohinder Singh and others' 2017 (4) PLR 729.

In view of the above, there is no ground to interfere.

Hence, both appeals are dismissed.

22.01.2020

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Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No