

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

RSA-3954-2012 (O&M)
Date of decision : 12.03.2020

Shamsher Singh

...Appellant

Versus

Nihal Kaur (since deceased) through her LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S. Jammu, Advocate for the appellants.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Amandeep Singh, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM-10669-C-2012

For the reasons stated in the application, which is duly supported by an affidavit, delay of 45 days in refileing the present appeal is condoned.

Application is allowed.

Main case

The plaintiff-appellant has filed the present Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below while dismissing the suit filed for declaration that the judgment and decree passed by the Civil Court on 04.09.1992 in Civil suit titled as Smt. Nihal Kaur Vs. Joginder Singh, is not binding on the rights of the plaintiff.

At this stage, it would be appropriate to notice that Joginder Singh was common ancestor of the parties. Joginder Singh was having two wives. From the first wife i.e. Chand Kaur, Balbir Singh was born who died in the year 1985. Shamsher Singh and Balraj Singh, the plaintiffs are sons of Balbir Singh. From the second wife i.e. Nihal Kaur, Boota Singh was born. Joginder Singh, in order to resolve the dispute, divided the property and gave land measuring 127 kanals 1 marla in Village Bhangar Khera Acha Dikki to the plaintiffs whereas equivalent land measuring 127 kanals 1 marla was given to defendant No.3 i.e. Boota Singh in Village Burj Muhar. Joginder Singh had kept himself land measuring 26 kanals 1 marla. Nihal Kaur filed a suit claiming pre-existing right of maintenance. Joginder Singh admitted the claim of Nihal Kaur resulting in decree.

Both the Courts, on appreciation of evidence, have found that Joginder Singh had already distributed land measuring 16 acres each approximately to the plaintiffs as well as Boota Singh. In such circumstances, the Courts have held that judgment and decree passed on 04.09.1992 cannot be interfered with.

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

Learned counsel for the appellant has submitted that the property in the hands of Joginder Singh was coparcenary property and, therefore, Joginder Singh had no right to transfer the property in favour of Nihal Kaur.

This Court has considered the submissions. However, finds no

merit therein.

Even on notional partition, Joginder Singh would be entitled to the land much more than 26 kanals. The wife has pre-existing right of maintenance. Thus, only small part of the joint land was acknowledged in favour of Nihal Kaur. The plaintiffs have already been given more than their due shares in the joint land. Hence, there is no ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Accordingly, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

12.03.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No