

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

RSA No. 5447 of 2019(O&M)

Date of decision: 18.2.2020

Gurinder Kaur and othersAppellants

VERSUS

Surjit Kaur and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Mohan Singh Puri, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration that appellants/plaintiffs are owners of land measuring 14 kanal 2 marlas out of land measuring 28 kanal 4 marlas detailed in headnote of the plaint, restoration of its possession and mesne profits by setting aside consent decree dated 18.10.1982 passed in favour of defendant No.1 and against defendant No.2 was dismissed by the trial Court vide judgment and decree dated 26.10.2017 that came to be affirmed in appeal by the Additional District Judge, Kurukshetra vide decree dated 29.07.2019.

The Courts have held that during lifetime of Gurdev Singh Sodhi, erstwhile owner of the suit land in respect whereof consent decree was passed in favour of defendant No.1- Surjit Kaur, mother of Gurdev Singh Sodhi, the appellants/plaintiffs cannot maintain the suit to challenge the decree dated 18.10.1982.

Counsel for the appellants, in response to a query, would fairly inform that in the present suit, the plaintiffs did not seek declaration with regard to civil death of Gurdev Singh Sodhi by invoking the relevant provisions in law. He would further concede that till date, there is no decree passed by the Civil Court declaring Sh. Gurdev Singh Sodhi to be civilly dead. Even if Gurdev Singh Sodhi is absconding and declared as a proclaimed offender by the criminal Court, the same is not sufficient to accept contention of the appellants that Sh. Gurdev Singh Sodhi is no longer alive and appellants/plaintiffs can maintain a suit assailing the decree dated 18.10.1982 more particularly in the circumstances that appellants are not claiming any independent right in the suit property and have sought to claim their right through Sh. Gurdev Singh Sodhi by claiming themselves to be wife, sons and daughter of said Gurdev Singh Sodhi.

To be fair to the appellants, counsel has sought to rely upon a Division Bench judgment of the Calcutta High Court **Sudarshan Shaw Vs. Subhas Shaw, 2005(4) ICC 90** wherein it has been held that all that applicant is required to prove is that the person concerned was dead at the time of presentation of the application. Once some evidence is given and it is further established that at the relevant time the applicant had a fixed place of abode within the territorial jurisdiction of the Court, there is no bar in entertaining the application even if actual date of death is not available. However, in the said case, there was no dispute if the testator was dead or alive. On the contrary, in the instant case, the appellants sought to claim their ownership to the suit land being successors in interest of Sh. Gurdev

Singh Sodhi but without proving that Sh. Gurdev Singh Sodhi is dead or seeking declaration that he be declared to be civilly dead. In this view of the matter, the appellants cannot derive any advantage to their contention from the referred authority.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

FEBRUARY 18, 2020

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no