

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

RSA No.170 of 2020 (O&M)

Date of Decision: 03.03.2020

Sahdev

..... Appellant

Versus

Harender and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPALPresent: Mr.Sumit Sangwan, Advocate,
for the appellant.

* * * *

ANIL KSHETARPAL, J. (Oral)

The plaintiff-appellant has filed the present regular second appeal against the concurrent finding of the facts arrived at by the Courts below while dismissing the suit filed with the following prayer:-

“Suit for declaration to the effect that plaintiff is owner in possession of suit land measuring 73 kanal 11 marla, 3/8 share of total land measuring 196 kanal 4 marla comprising in khewat No.132/119 khatuni No.148 vide jamabandi for the year 2004-05 situated within the revenue estate of village Abidpura, Tehsil Charkhi Dadri, District Bhiwani and judgment and decree passed in civil suit No.299 filed on 02.05.1994 decided on 27.08.1994 titled as Harender etc. Vs. Smt.Chiriyia and on the basis of aforesaid decree mutation No.528 dated 23.07.1996 sanctioned and the aforesaid decree and mutation are based on fraud and cheating, against law and fact, illegal, null and void not binding on the rights of the plaintiff. On the basis of the decree and mutation the jamabandi for the years 1999-2000 and 2004-05 are also illegal, against facts and record, null and void and liable to rectified. If this Hon'ble

Court would reach to the conclusion that defendants are in possession of 49 kanal 5 ¼ marla land in such eventuality the possession would also be delivered to the plaintiff.”

The parties are members of a larger family. Their predecessor was late Shri Sheo Chand. He divided the property measuring 298 kanal in favour of his two sons; Jhunda Ram and Balla Ram. Sheo Chand was having four children i.e. two sons Jhunda Ram and Balla Ram, and two daughters i.e. Jeewani and Chiriya. Sheo Chand, after dividing the property amongst two sons, was left with 197 kanal, which, on his death, came to the share of the four class-I heirs. Jhunda Ram was blessed with three sons; Partap, Ram Singh and Sahdev (plaintiffs), whereas Balla Ram, who was married to Manbhari, was issueless. Partap was adopted by Bhalla Ram, vide adoption deed dated 9th September 1969. Partap was blessed with two sons; Harender and Naveen, who are defendant Nos.1 and 2. Partap is defendant No.3. The present suit was filed by Sahdev.

Chiriya, daughter of Sheo Chand, acknowledging family settlement, suffered a decree with respect to her share in the property, which was received from Sheo Chand in favour of Harender and Naveen, vide judgment and decree dated 2nd May, 1994. Thereafter, another suit was filed by the plaintiff-Sahdev and his brother-Ram Singh against Jeewani, Chiriya and Manbhari. The aforesaid suit was also decreed on 27th November, 1995, acknowledging a prior family settlement.

The question is, once there is a prior judgment and decree dated 2nd May, 1994, in favour of Naveen and Harender for declaration that they are the owners in possession of the land, which was originally inherited by Chiriya then whether Sahdev and Ram Singh would get any right, title or

interest in the share of Chiriya. Both the Courts by appreciation of evidence have found that since Chiriya, who remained alive for a period of five years and never disputed correctness of the judgment and decree dated 2nd May, 1994, therefore, rights of defendant Nos.1 and 2 under the judgment and decree dated 2nd May, 1994, would not be effected by the subsequent judgment and decree dated 27th November, 1995. The plaintiff claimed that prior decree dated 2nd May, 1995, was a result of fraud. However, he failed to establish that fact. Chiriya or her legal heirs have never challenged the correctness of judgment and decree dated 2nd May, 1994.

Hence, there is no ground to interfere the concurrent finding of the fact arrived at by the Courts below.

Regular Second Appeal stands dismissed accordingly.

All the pending misc. applications, if any, are disposed of in view of the above said judgment passed.

3rd March, 2020

P.Seth

(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No