

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 294 of 2019 (O&M)

Date of Decision: 09.09.2022

Smt. Geeta Devi and Another

... Petitioner(s)

Versus

Om Parkash and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Saurabh Dalal, Advocate
for the appellant(s).

Anil Kshetarpal, J.

CM-632-C-2019

1. For the reasons stated in the application, the same is allowed and the delay of 141 days in refiling the appeal stands condoned.

RSA-294-2019

2. While assailing the concurrent findings of facts arrived at by both the Courts below, the plaintiffs have filed the present appeal.

3. Pursuant to the family settlement, a judgment and decree was passed on 16.01.1987. The plaintiffs, namely Smt. Geeta Devi and Smt. Bimla challenged its correctness by filing a suit on 17.08.2013 i.e. after a period of 26 years. The plaintiffs claim that at the time when the judgment and decree were passed in the year 1987, they were minor. Both the courts below have found that the plaintiffs have failed to prove the same.

4. Heard the learned counsel representing the plaintiffs, at some length and with his able assistance, perused the paper-book.

5. The learned counsel representing the appellants contends that from Ex.P1, the register of admission and withdrawal and a certificate issued by the Headmaster of the Government Primary School, it is evident that the

plaintiff No.2-Smt.Bimla Devi was born on 10.09.1975. He contends that both the courts below have erred in overlooking these documents.

6. Both the Courts below have noticed that plaintiff No.2-Smt.Bimla Devi, while appearing in evidence, has stated that there is an entry of her date of birth in the village Chowkidar's Register. However, the same was not produced. PW.1-Sh.Anil Kumar, JBT Teacher, has produced the register of admission and withdrawal and a certificate issued by the Headmaster. He admitted that there is neither any birth certificate of Smt.Bimla Devi nor a copy of register of Chowkidar was produced. He admitted that there is neither any affidavit of the father or guardian of the child. Apart from the entry in the school record, no evidence was produced. The Court has also noticed that the plaintiffs along with their mother and two remaining sisters executed a general power of attorney dated 30.12.1986 in favour of their uncle, namely Sh.Hema Ram. Moreover, the plaintiffs' mother has stepped into the witness box and stated that both the plaintiffs were major on the date the judgment and decree dated 16.01.1987 were suffered. She had no interest adverse to the rights of the plaintiffs.

7. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

September 09, 2022

"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No