

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 162 of 1994

Date of Decision: 13.02.2024

Sukhminder Singh

... Appellant(s)

Versus

Boota Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sanjeev Kumar Aggarwal, Advocate
for the appellant(s).

Mr. P.S.Jammu and Mr. Karan Bansal, Advocates
for the respondent No.1 to 3.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in ***Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157.***

2. In this regular second appeal, the plaintiff assails the correctness of the findings of facts arrived at by the First Appellate Court, which, in turn, has reversed the judgment and decree passed by the Trial Court.

3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. Jora Singh, Boota Singh and Chhota Singh filed a suit against the appellant, namely Sukhminder Singh and proforma respondent, namely Smt.Sukhi, who are the son and daughter of Devi Chand, for the grant of decree of declaration that plaintiff No.1 is the owner in possession of half share, whereas plaintiff No.2 and 3 are the owners in equal share of the remaining half share in the land

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measuring 24 kanals being 480/8234th share in the total land measuring 411 kanals and 14 marlas comprised in khewat No. 158 as per jamabandi for the year 1982-83, located in village Biruwala Gudha, Tehsil and District Sirsa. The suit was filed by Jora Singh and others claiming that they have exchanged the property with the defendants, namely Smt.Sukhi and Sukhminder Singh with their plot measuring 6 marlas along with four rooms constructed thereon and a hand-pump. In the aforesaid suit, Sukhminder Singh filed a written statement admitting the claim of the plaintiffs in the said suit. He also claimed to be the power of attorney holder of his sister Smt.Sukhi. Thereafter, an application was filed by Smt.Sukhi and Sukhminder Singh before the Trial Court for advancing the date of hearing which is Ex.D1. Sukhminder Singh filed written statement admitting the contents of the suit. The testimony of Sukhminder Singh was recorded by the Court. On the basis of the aforesaid testimony, the suit was decreed on 26.07.1985. Sukhminder Singh filed a suit for the grant of decree of declaration that he along with defendant No.4-Smt.Sukhi is the owner in possession. He challenged the correctness of the judgment and decree passed on 26.07.1985. The Trial Court decreed the suit on the ground that Boota Singh and Chhota Singh did not sign the plaint of the previous suit. The First Appellate Court held that the plaintiffs have failed to prove any fraud or misrepresentation. The thumb impressions of Smt.Sukhi and Sukhminder Singh were proved in the previous suit by examining the Handwriting and Fingerprint Expert. Sukhminder Singh was the power of attorney holder of Smt.Sukhi. Thus, the First Appellate Court accepted the appeal.

4. The learned counsel representing the appellant contends that the previous suit was not maintainable because the plaint was not signed by Boota Singh and Chhota Singh, plaintiff No.2 and 3, respectively. He further submits that the decree was the result of fraud.

5. This Court has considered the submissions of the learned counsel representing the parties.

6. It is evident that Jora Singh, plaintiff No.1, did sign the plaint. At that time, Chhota Singh was minor. The absence of thumb/signatures of Boota Singh is a small irregularity which is rectifiable. This does not go to

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the roots of the case. In this suit, the plaintiff (appellant) is required to prove the fraud, but he failed. The judgment and decree passed by the Trial Court cannot be set aside on small irregularity. The judgment and decree passed by the Trial Court is required to be upheld unless it is proved beyond the reasonable doubt that the decree was obtained by playing fraud. In this case, it is evident that Sukhminder Singh and Smt.Sukhi themselves filed an application for advancing the date of hearing and thereafter, the suit was decreed once the testimony of Sukhminder Singh was recorded.

7. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned judgment and decree passed by the First Appellate Court. Hence, the present appeal is dismissed.

(Anil Kshetarpal)
Judge

February 13, 2024
“DK”

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