

**In the High Court of Punjab and Haryana, at Chandigarh**

**Regular Second Appeal No. 398 of 1994 (O&M)**

**Date of Decision: 26.02.2024**

Dalip Singh  
... Appellant(s)

Versus

Sher Singh  
... Respondent(s)

**CORAM: Hon'ble Mr. Justice Anil Kshetarpal.**

Present: Mr. Vikas Singh, Advocate  
for the appellant(s).

Mr. Raj Kumar Gupta, Advocate  
for the respondent.

**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 concurrent findings of facts arrived at by both the Courts below while dismissing his suit for grant of decree of declaration that the judgment and decree dated 30.09.1986 passed in favour of the defendant and against late Sh.Arjan Singh is illegal, null and void.
3. In fact, the defendant/respondent is/was nephew of the appellant as well as late Sh.Arjan Singh. Sher Singh, defendant, filed a suit for grant of decree of declaration claiming the property on the basis of family settlement in which late Sh.Arjan Singh appeared and admitted the plaintiff's claim. Hence, the suit was decreed on 30.09.1986. Arjan Singh died on 17.02.1988. The appellant filed a suit on 16.03.1988 claiming that

the aforesaid decree was a result of fraud. However, he failed to lead any evidence to prove the same. Thus, both the Courts below dismissed the plaintiff's suit.

4. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with the requisitioned record, which is available in the digital form.

5. The learned counsel representing the appellant submits that the decree results in transferring the immovable property worth more than ₹100/- which could not be admitted in evidence unless it is registered.

6. This Court has considered the submissions of the learned counsel representing the appellant, however, finds no merit.

7. The settlement of dispute between the family members through a memorandum of family settlement is a well-known concept which has been accepted and encouraged by the Courts from 1950. In *Kale v. Director of Consolidation (1976) 3 SCC 119*, three Judges Bench elaborated on the aforesaid concept which has been consistently followed by the Courts.

8. 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.

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

(Anil Kshetarpal)  
Judge

February 26, 2024

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No