

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.215 of 1998 (O&M)
Date of Order:15.02.2025

Shamsher Singh ..Appellant
Versus

Gurjant Singh and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

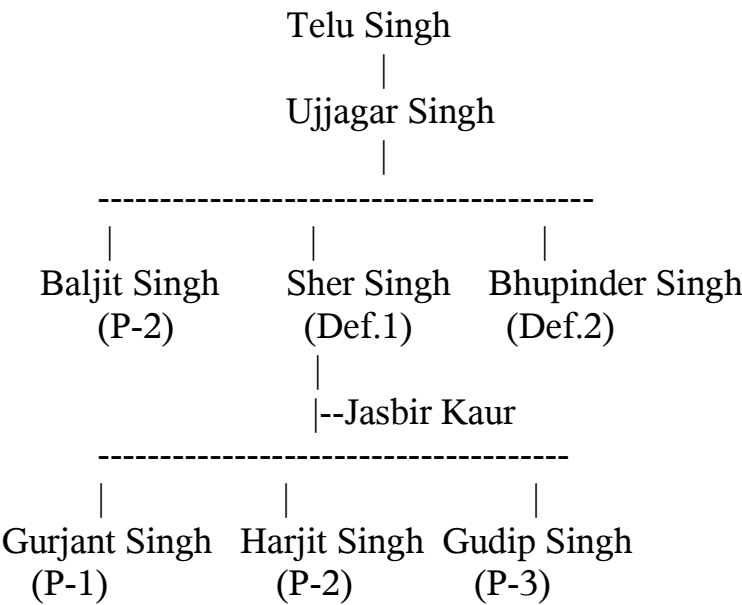
Present: Mr. N.P.S.Mann, Advocate, for the appellant.
Mr. Narinder Singh Lucky, Advocate, for the respondents.

ANIL KSHETARPAL, JUDGE (Oral)

1. BRIEF FACTS:-

1.1 This Regular Second Appeal has been filed by defendant no.3, to assail the correctness of the First Appellate Court judgment which in turn has reversed the judgment of the trial court.

1.2. A small family tree is drawn to understand the relationship of the parties:-



1.3. Defendant no.3 is Sh. Shamsher Singh son of Sh. Puran Singh son of Sh. Bir Singh. He was not even distantly related with the family of



Sh. Ujagar Singh or his children Baljit Singh, Sher Singh and Bhupinder Singh.

1.4. Sh. Shamsher Singh filed a suit for grant of decree of declaration to the effect that he is owner in possession of the land measuring 28 kanals and 17 marlas, situated at village Phagan Majra, Tehsil Fatehgarh Sahib, on the basis of the family settlement. Paragraphs 2 and 3 of the plaint filed in Civil Suit No.160/16.04.1982, reads as under:-

- “2. *That the jointness of land and their joint cultivation of land always created chaos and confrontation in the family members.*
3. *That the family dispute came to the knowledge of near relatives and other relatives. They assembled in the village in the month of November, 1981, and gave a full thought to the problems of the parties. Jit Singh partner was given some other land in the village, and all the suit land in oral family settlement i.e. specific khasra numbers were given to the plaintiff and since the plaintiff is in cultivating possession of the same as owner. The defendants and Jit Singh were present at the time of settlement, and they had promised to get the entries of ownership corrected in the name of the plaintiff.”*

1.5. Defendants-Sher Singh and Bhupinder Singh filed written statement admitting the plaintiffs' case. The statements of Sh. Sher Singh and Sh. Bhupinder Singh were also recorded. Consequently, the court on the basis of admission of the defendants in their pleadings and the statements decreed the suit. Subsequently, the plaintiffs, namely, three children of Sh. Sher Singh, filed a suit for grant of decree of declaration that they are joint owners in possession of the property of the decree dated 28.05.1982 and mortgage deed executed by defendant no.3-Shamsher Singh is not binding



on them. They claimed that the previous decree was a result of fraud and misrepresentation.

1.6. Defendant no.3 contested the suit on the ground that the property is not Joint Hindu Coparcenary Property and the decree has been passed on the basis of admission of the defendants in the previous suit.

1.7. The trial court dismissed the suit, however, the First Appellate Court has reversed the decree.

2. ARGUMENTS:-

2.1. The learned counsel representing the appellant contends that the plaintiffs have failed to prove misrepresentation or fraud played by the defendants when the civil court decree was passed. He submits that Sh. Sher Singh and Sh. Bhupinder Singh suffered statements which resulted in decree. The plaintiffs also failed to prove that the property is ancestral property.

2.2. Per contra, the learned counsel representing the respondents submits that the decree passed on 28.05.1982 is based upon misrepresentation as the appellant is not even remotely connected with the family of Sh. Ujjagar Singh or his children. He submits that the court decree cannot be made a basis to transfer the immovable property for the first time.

3. ANALYSIS AND DISCUSSION:-

3.1. This court has considered the submissions of the learned counsel representing the parties.

3.2. Ordinarily, the court is reluctant to go behind the decree which has been passed by a competent court of jurisdiction. However, in this case,



the foundation of the previous suit was a family settlement. There could not be any family settlement with a stranger who was having not even a remote connection with the family of Sh. Ujagar Singh. Once, the foundational fact or basis of the suit is factually incorrect, the duty of the court in the subsequent suit becomes onerous. Once, it is proved that the previous decree was passed on the basis of incorrect facts, then the court cannot close its eyes. The consent decree passed by the court is on the basis of admission made by the parties. The court has not decided the case on merits. Undoubtedly, a civil court decree passed on admission is binding, however, if the entire decree is based upon factually incorrect averments, then the court is required to examine the same in detail. Moreover, the appellant has not proved that he in lieu of the suit property, gave anything to Sh. Sher Singh and Sh. Bhupinder Singh who were defendants in the original suit. The appellant was not even a co-sharer in the joint khewat.

4. **DECISION:-**

- 4.1. Keeping in view the aforesaid facts, this court does not find it appropriate to interfere with the findings of fact arrived at by the First Appellate Court.
- 4.2. Dismissed.
- 4.3. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

February 15, 2025
nt

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