



RSA-2229-2017 (O&M)

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

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RSA-2229-2017 (O&M)
Date of decision:08.01.2025

Kamal Kumar Gemini

... Appellant

Vs.

Nilamber Gemini and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ajay Jain, Advocate for the appellant.

SUVIR SEHGAL J.

1. Assailing the judgments and decrees passed by both the Courts whereby concurrent findings have been recorded, appellant-plaintiff has filed the instant second appeal.

2. Pleaded case of the plaintiff is that he had purchased the suit property along with defendant No.1 in equal shares vide registered sale deed dated 30.12.1992. A civil suit bearing No. 112 of 2000 was filed by defendants No.1 to 3 regarding some properties including the suit property and by playing a fraud, they obtained a compromise decree dated 18.11.2000. A mutation was entered on the basis of compromise decree. He alleged that on the basis of the mutation, a sale deed dated 20.07.2024 had been executed by defendant No.1 in favour of Jai Kumar and defendant No.1 intends to

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alienate the property. Alleging that he had been deceived and had never received summons in the previous suit, plaintiff filed a suit for declaration to the effect that judgment and decree dated 18.11.2000 passed in the previous suit and mutation sanctioned on its basis, are illegal, null and void and not binding on the right of the plaintiff and that he is the one-half owner in the suit property.

3. Upon notice, some of the defendants filed a written statement *inter alia* questioning the *locus standi* of the plaintiff to file the suit. It was submitted that the plaintiff along with his father, some defendants and other family members were jointly owners in possession of the suit property. A written compromise was arrived at between them in the previous litigation. On the basis of the settlement Ex.C1 amongst the family, decree dated 18.11.2000 was passed, which was duly registered. Plaintiff's father raised numerous objections before the revenue authorities, which were dismissed by the Collector. It was denied that the compromise decree was obtained by fraud. The execution of sale deed dated 20.07.2004 in favour of defendant No.6, who is brother of the plaintiff, was admitted and it was averred that on the same date, plaintiff executed a sale deed in favour of defendant No.2. A stand was taken that plaintiff and defendants No. 4 to 8 constituted a joint hindu family and all the properties had been purchased out of the joint family funds.

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Defendants No. 4 to 8 appeared before the trial Court but did not file any written statement and their defence was stuck off. Plaintiff did not file any replication. On the basis of the pleadings of the parties, following issues were framed:-

(i) Whether the plaintiff is entitled to declaration to the effect that decree dated 18.11.2000 and mutation No.12057 based thereon is null and void? OPP.

(ii) Whether plaintiff is entitled to ownership of one-half of the suit property? OPP.

(iii) Whether the suit is not maintainable in the present form? OPD.

(iv) Whether the suit is bad for non-joinder of necessary parties? OPD

(v) Whether the plaintiff has no cause of action to file the present suit? OPD.

(vi) Whether the plaintiff has concealed the true and material facts from the Court? OPD.

(vii) Relief.

4. After contest, suit was dismissed by the trial Court by judgment and decree dated 30.10.2012. Plaintiff remained unsuccessful in the first appeal, which was rejected by the learned Additional District Judge, Rewari, by judgment dated 14.10.2016, resulting in the institution of the present appeal by him.

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5. Mr. Ajay Jain, counsel for the appellant has argued that the suit property was never a part of the compromise Ex.C1, entered into between the parties. He submits that previous decree dated 18.11.2000 had been obtained by fraud and that the appellant neither engaged a counsel nor appeared before the trial Court to record his statement. It is also his contention that the Courts have erred in recording a finding that the suit is barred by limitation although, the appellant had filed a suit within a period of three years of gaining knowledge of the passing of the decree.

6. I have heard counsel for the appellant and considered his submissions besides examining the requisitioned record with his able assistance.

7. The suit property comprises of a hall, tin shed, workshop and open area bearing house tax No. 3126/222 situated at Ganpat Nagar, Rewari. Appellant claims to be one-half owner in the suit property by virtue of registered sale deed dated 30.12.1992, Ex.PW2/A. An examination of the compromise Ex.C1 shows that this property specifically finds mention in the compromise. It, therefore, does not lie in the mouth of the appellant to urge that the suit property was not a part of the compromise entered into between the parties on the basis of which decree dated 18.11.2000 Ex.P2 was passed. Compromise Ex.C1 bears signatures of the appellant, his spouse,



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father and other family relations. Except for the appellant, no other signatory to the compromise including his spouse, has alleged that the compromise was obtained by deceit. A perusal of the sale deed dated 20.07.2004, Ex.PW7/A executed in favour of respondent No.6, Jai Kumar, shows that the appellant had appeared as a vendee on behalf of his brother-respondent No.6. The sale deed had been executed after passing of the decree dated 18.11.2000, Ex.P2. Appellant, cannot claim that he was not aware of the passing of the compromise decree and that he came to know about it in July, 2007. Appellant has failed to lead any cogent evidence to establish that the decree dated Ex.P2 had been obtained by fraud. Furthermore, Order 23 Rule 3A of the Code of Civil Procedure bars the filing of the suit to set aside a compromise decree. There is no infirmity in the judgments and decrees passed by both the Courts, which are affirmed.

8. For the foregoing reasons, this Court does not find any merit in the appeal, which is dismissed.

9. As the main appeal has been decided, all pending applications shall stand disposed of.

08.01.2025
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No