

**RSA-563-2018(O&M)****-1-****109****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****RSA-563-2018(O&M)
Date of decision:-08.01.2025**

Dushyant Kumar

...Appellant

Versus

Ashok Kumar

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL**Present** : Mr. Dinesh Rawat, Advocate
for the appellant.

SUVIR SEHGAL, J.(ORAL)**CM-1368-C-2018**

1. For the reasons given in the application, it is allowed.
2. Delay of 605 days in re-filing of the appeal is condoned.

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3. Assailing the concurrent finding recorded by both the Courts below, appellant – plaintiff is before this Court in the instant second appeal.

4. Pleaded case of the plaintiff is that he is owner of 1/4th share in House No.1 - R, Model Town, Panipat (for short “the suit



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property”) on the basis of a sale deed. The defendant, who is his brother played fraud upon him and grabbed the agricultural land left behind by their deceased father. It has been averred that the defendant obtained the signatures of the plaintiff on some blank papers on the pretext of getting a mutation of agricultural land sanctioned, but used the said papers for getting a judgment and decree. The plaintiff claims that he came to know about the judgment and decree when the defendant started negotiating with a third party for alienating the suit property.

5. Upon being served, defendant appeared and contested the suit by filing a written statement wherein various preliminary objections were taken. On merits, it was submitted that plaintiff voluntarily suffered a judgment and decree dated 02.08.1995 in favour of the defendant. Defendant became an owner on the basis of the consent decree and that plaintiff has no right or interest in the suit property. It has been stated that their predecessor had suffered a judgment and decree dated 11.11.1957 even before plaintiff was born, and the defendant became the owner of 87 Bigha 02 Biswa of land. Another decree was passed in Civil Suit No.103 of 1974 filed by plaintiff along with one Ashwani Kumar, which was challenged by the defendant and set aside by judgment and decree dated 23.12.1975. Other averments made in the plaint were denied. Issues were framed from the pleadings of the parties, who led evidence in support of their respective case. After contest, Trial Court by judgment and decree dated 23.05.2013 dismissed the suit. Plaintiff remained unsuccessful in the first appeal, which was rejected by the learned Additional District Judge, Panipat by judgment



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dated 06.08.2015, resulting in the institution of the present appeal.

6. Counsel for the appellant has argued that the Courts below have failed to appreciate that judgment and decree dated 02.08.1995 was obtained by playing fraud and the blank papers signed by the appellant had been misused by the respondent. He has urged that the appellant never appeared before the Court at the time of passing of the said decree nor did he engage a counsel to appear on his behalf.

7. I have heard counsel for the appellant and considered his submissions.

8. Although the appellant has alleged that he never appeared before the Court nor did he authorize a lawyer to appear on his behalf, but he failed to examine the counsel, who had filed the power of attorney on behalf of the appellant. Record shows that the appellant had appeared and he had made a statement Ex.D6 on 02.02.1995 in favour of the respondent. The statement is duly signed by the appellant. It is not the case of the appellant that some other person had appeared on his behalf. Sanctity is attached with the record of the Court proceedings. Appellant has miserably failed to discharge the onus placed upon him and the findings recorded by the Courts deserve to be upheld. The appellant has failed to establish that the judgment and decree Ex.D1 and Ex.D2 are result of fraud or misrepresentation.

9. In **Navratan Lal Sharma Versus Radha Mohan Sharma & Ors., 2025 (1) RCR (Civil) 278**, Hon'ble Supreme Court has held that neither a fresh suit is maintainable nor an appeal can be filed for setting aside a compromise decree and the only remedy available to an



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aggrieved party is to approach the Court that recorded the compromise under Order 23 Rule 3 CPC. The civil suit filed by the appellant is, therefore, not maintainable.

10. For the reasons recorded above, this Court does not find any infirmity or illegality in the judgment and decree passed by the Courts below, which are affirmed.

11. Finding no merit in the appeal, it is dismissed with no order as to costs.

12. Pending application, if any, is disposed off.

(SUVIR SEHGAL)
JUDGE

08.01.2025

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No