

(2019) 01 P&H CK 0214

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 25 Of 1999 (O&M)

Gurmail Singh And Others

APPELLANT

Vs

Dev Singh

RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

Evidence Act, 1872 — Section 68, 69
Code Of Civil Procedure, 1908 — Order 12 Rule 6

Citation : (2019) 01 P&H CK 0214

Hon'ble Judges : Anil Kshetarpal, J

Bench : Single Bench

Advocate : Kanwaljit Singh, Abhishek Bajaj, D.V. Sharma, Shivani Sharma

Final Decision : Allowed

Judgement

Anil Kshetarpal, J

Defendants-appellants are in the appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court resulting in decretal of the suit filed by the plaintiff.

In the present case, the greed to the property has resulted into this litigation. The question which requires determination is "whether a consent decree passed under Order 12 Rule 6 of the Code of Civil Procedure acknowledging a family settlement is required to be registered or not."

Battan Singh was the common ancestor. He had two sons namely Pritam Singh and Gurbachan Singh. Pritam Singh was childless, bachelor whereas Gurbachan Singh has a son-Dev Singh, the plaintiff and a daughter Debo. The defendants-appellants are children and grand-children of Smt. Debo who was married with Sadhu Singh but became widow and started living with his cousin brother-Pritam Singh who was childless bachelor. It has come in evidence that Smt. Debo did not receive any property either from her father or from her in-laws.

On the basis of family settlement, a suit was filed by the defendants-appellants pleading that the family settlement has been arrived at and therefore, the defendants-appellants, who were plaintiffs in that suit, are owner in possession. Pritam Singh appeared and filed admitting written statement and suffered a statement while appearing in Court admitting the claim of the plaintiff which resulted into a decree dated 12.03.1987. Pritam Singh thereafter remained alive for more than two years but never questioned the decree. Dev Singh, son of Gurbachan Singh and brother of Debo had filed the present suit challenging validity of the decree dated 12.03.1987.

It will be noted here that the defendants-appellants had also set up a registered Will executed by late Sh. Pritam Singh in their favour but the same has not been proved in accordance with the provisions of either Section 68 or Section 69 of the Evidence Act.

Learned trial Court on appreciation of evidence held that the judgment and decree dated 12.03.1987 is valid, however, the Will has not been proved. Accordingly, the suit filed by the plaintiff was dismissed.

Learned First Appellate Court reversed the judgment of the trial Court on the following two grounds:-

1. There is no evidence of family settlement arrived at between the parties.
2. The defendants who were plaintiffs in the previous suit filed in the year 1987 has no pre-existing right in the property.

This Court has heard learned senior counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

As regard the first reason, it is apparent that the plaint filed while filing the first suit which is Ex.P-2 on the file specifically records that on 01.06.1970, a private family arrangement took place between the family members and Pritam Singh had agreed and acknowledged shares of various plaintiffs in the family settlement. Pritam Singh filed the written statement admitting the contents of that para. Still further, Pritam Singh appeared in evidence on 12.03.1987 before the Court and stated that he admits the claim of the plaintiffs in the suit. On the basis of the aforesaid statement, the judgment and decree was passed. In the considered view of this Court, First Appellate Court erred in recording a finding that there is no evidence of family settlement. It is nobody's case that there was any family settlement in writing. The oral family settlement is well known concept under Hindu law and decrees acknowledging those family settlements are being recognized by the Courts from the very beginning. This Court while deliberating on this issue in detail has decided in the case of Dhian Singh and others Vs. Mohinder Singh and others, 2017(4) PLR 729 accepting this position. Similarly, even the second reason assigned by First Appellate Court is equally erroneous. The defendants-appellants are members of the family. In fact, all the

parties are members of the family being successor-in-interest of Battan Singh. Rather in this case, facts proved that Dev Singh because of greed of property has not spared his sisters' children and grand-children. It is because of this greed, the suit has been filed. It has come in evidence that Smt. Debo became widow and she started living with Pritam Singh after shifting back to the village from where she belong before her marriage. The voter list from 1976 has been produced which prove that Pritam Singh along with Smt. Debo and her children and grand-children used to reside in the same village. The children of Smt. Debo were not stranger to the family. One of the defendant is son of Smt. Debo whereas others are grand-children of late Smt. Debo.

Learned counsel for the respondent while drawing attention of the Court to the statement of Gurmail Singh-defendant who has appeared as DW-9, has submitted that Gurmail Singh has admitted that the defendants did not file any previous suit against Pritam Singh. Hence, he submitted that the decree is result of fraud.

The statement of Gurmail Singh is to be read in entirety and one line in cross-examination cannot be read in isolation of the entire statement. Still further, once there is a plaint filed by Gurmail Singh and others which is exhibited on the record and subject matter of challenge in the present suit, the contention of learned senior counsel for the respondent has no substance.

In view of the aforesaid discussion, question as framed in para 2, is answered in favour of the appellants.

For the reasons recorded above, the judgment of the learned First Appellate Court is set aside and that of the trial Court is restored.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Regular second appeal is allowed.