

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3480 of 2009(O & M)
Date of Decision:30.06.2010

Chand Singh & anr.

.... appellants

Versus

Bant Singh & Ors.

.....respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR GARG

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.R.S.Modi, Advocate
for the appellants

RAKESH KUMAR GARG J.(ORAL):

CM No.10760-C of 2009

Civil Misc.application is allowed subject to just exceptions.

Delay, if any, in making up the deficiency in the court fee is condoned.

CM disposed of.

RSA No.3480 of 2009

This is plaintiffs' second appeal challenging the judgement and decrees of the courts below whereby their suit for declaration with consequential relief of permanent injunction was dismissed with costs.

As per the averments, earlier Bhagwan Kaur, mother of plaintiffs/appellants and defendants No.1 & 4 who died on 25.08.1986 was the owner in possession of the suit land and after her death, plaintiffs and defendants No.1 and 4 became the owners of the suit land in equal shares. During her life time, she never suffered any decree in favour of defendants No.1 to 3 regarding the suit land and the alleged decree dated 14.09.1978

passed in Civil Suit No.350 dated 07.08.1978 titled as "Ajaib Singh etc.vs.Bhagwan Kaur" and decree dated 13.11.1972 passed in Suit No.447 dated 27.10.1972 titled as "Bant Singh vs.Bhagwan Kaur" were illegal, null and void and had no binding effect upon their rights. The entries made in the revenue record on the basis of above said decree were also wrong and were liable to be corrected. It was further asserted that the aforesaid decrees were obtained from the court by concealing the actual facts.

The suit was contested by defendants No.1 to 3 raising various preliminary objections. On merits, it was submitted that Bhagwan Kaur suffered the alleged decrees on her own. She lived for many years after passing of the aforesaid judgements and she never challenged the same. Moreover, aforesaid Bhagwan Kaur had suffered the alleged decree dated 30.05.1978 on the basis of a compromise effected between the parties. While non-suiting the appellants, the courts below have recorded a finding that decree suffered by Bhagwan Kaur was valid and no fraud etc.was committed by the respondents.

I have heard learned counsel for the appellants.

Admittedly, suit land was owned by Bhagwan Kaur and was self acquired property and the plaintiffs had no pre-existing right in that property. Bhagwan Kaur had the right to dispose of the property in any manner she liked during her lifetime. The consent decree in dispute was suffered by her in the year 1972 and 1978 and she remained alive till 25.08.1986. She never challenged the aforesaid decrees during her life time. The plaintiffs have challenged the said decrees by filing the present suit on the basis of fraud by alleging that Bhagwan Kaur had neither appeared in that civil suit nor she had engaged any counsel or filed written statement or made any statement in the court nor suffered the said decrees. The plaintiffs-appellants have no right to challenge the aforesaid

decrees on the ground of fraud when Bhagwan Kaur, who suffered the decrees herself, had not challenged the same during her life time on the said ground. Furthermore, there is no evidence on record to prove the contentions of the appellants. Learned counsel for the appellants was unable to point out any irregularity/defect in the aforesaid findings, on the basis of any material on record.

In this view of the matter, I find no merit in this appeal.

No substantial question of law arises in this appeal.

Dismissed.

(RAKESH KUMAR GARG)
JUDGE

30.06.2010

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