

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

R.S.A. No.1172 of 2004

Date of Decision: 31.8.2007.

Joginder

....Appellant.

Versus

Inder

...Respondent.

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

HEMANT GUPTA, J.(ORAL)

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for declaration challenging the decree dated 24.7.1992 allegedly suffered by the appellant, was dismissed.

It has been found by the learned first Appellant Court that the plaintiff submitted a written statement Ex.D2 admitting the contents of the plaint Ex.D1. Sh.SK Sharma, Advocate who filed the said written statement on behalf of the appellant in the previous suit was examined as DW2 who has proved his vakalatnama Ex.D5. He deposed that the written statement and vakalatnama bear thumb impression of the present appellant. The statement of appellant recorded in the previous suit by the Court is Ex.D4. He has also deposed that the contents of the written statement was read over and explained to Joginder Singh, who after understanding the same affixed his thumb impression. Thus, the learned first Appellant Court found that the decree dated 24.7.1992 cannot be an act of fraud or misrepresentation.

Learned counsel for the appellant has vehemently argued that

the recitals in the the plaint Ex.D1 are in respect of a family settlement which was to be acted upon in future and therefore, decree could not have been suffered as by virtue of such decree the rights are being created for the first time.

I am unable to agree with the said argument. The present defendant has asserted a family settlement. The defendant is none else but real brother of the present plaintiff. When the defendant alleged the family settlement, it was a settlement between two brothers. Mere fact that it was recited in the plaint that the family settlement shall be given effect to in future, will not mean that the family settlement was not arrived at before the filing of suit. Use of few words cannot control the intention of the parties which has to be gathered from the entire reading of the plaint.

In view of the fact that the present defendant has sought declaration in respect of the title, on the basis of family settlement which claim was admitted by the plaintiff in the previous suit, it cannot be said that the said decree suffers from any fraud or misrepresentation or that such decree created rights for the first time.

The findings recorded are sought to be disputed by way of re-appreciation of evidence. It could not be pointed out that any evidence has been misread or not taken into consideration. Consequently, I find no illegality or irregularity in such findings which may give rise to any substantial question of law for consideration in this Court in second appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

August 31,2007.
Reema