

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

**Regular Second Appeal No. 2670 of 2004  
Date of Decision : August 31, 2009**

Suraina Singh @ Suraina

....Appellant

Versus

Avtar Singh

.....Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN**

Present : Mr. Krishan Singh, Advocate

**T.P.S. MANN, J.**

Suit for possession, declaration and permanent injunction as a consequential relief filed by the plaintiff-appellant, was dismissed by the learned Civil Judge (Junior Division), Guhla, on 14.10.2000. Even the first appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Kaithal, on 17.2.2004. Aggrieved of the same, he is now before this Court by way of second appeal filed under Section 100 of the Code of Civil Procedure.

Though the plaintiff had placed on record sale deed Ex.P-8 but he failed to prove the said document as per the requirements of law. Mere marking of the document as an exhibit could not take place of proof of its due execution. Neither any attesting witness of the said document was produced nor any other witness examined for proving the execution

of the sale deed. So much so, the record register of the Registering Authority had also not been produced by the plaintiff. In such a situation, the learned Courts below rightly held that the plaintiff failed to discharge the onus placed upon him to establish that he was owner in possession of the suit land.

On perusal of the record, which stands requisitioned, it is found that the plaintiff was a party to the consent decree dated 23.12.1991 in civil suit No. 810 of 1991 titled “Avtar Singh V Suraina”. Once the plaintiff was a party to the said decree, he could challenge it only on the ground of fraud or on the ground that the Court passing the decree was not competent to do so. Though the plaintiff did plead that the aforementioned decree was null, void, fraudulent, bogus and had been obtained fraudulently by misrepresentation of true and material facts, yet he did not lead any evidence in that regard, especially in respect of fraud. There is also no evidence on the record that the aforementioned decree had been passed by a Court, which had no jurisdiction to try and decide the suit. Once it is held that the plaintiff was a party to the decree in civil suit No. 810 of 1991, he cannot wriggle out of the same by pleading that it had not been got registered.

The concurrent findings of facts arrived at by the learned Courts below, are based on proper appreciation of the material evidence brought on the record. These findings do not suffer from any illegality or

infirmity and, as such, cannot be interfered with in a second appeal, which is maintainable only on some substantial question of law and not otherwise. None of the substantial questions of law, as framed by learned counsel for the appellant, arises for consideration. The appeal lacks merit and is, therefore, dismissed.

**August 31, 2009**  
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**( T.P.S. MANN )**  
**JUDGE**