

(2001) 05 P&H CK 0184

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 1167 of 2001 (O and M)

Raj Kumar

APPELLANT

Vs

Ram Singh

RESPONDENT

Date of Decision: May 2, 2001**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100

Citation: (2001) 4 RCR(Civil) 203**Hon'ble Judges:** R.L. Anand, J**Bench:** Single Bench**Advocate:** Mr. R.S. Mamli, for the Appellant;**Final Decision:** Dismissed

Judgement

R.L. Anand, J.

This is a defendant's appeal and has been directed against the judgment and decree dated 12.1.2001, passed by the Court of Additional District Judge, Jagadhri, which, affirmed the judgment and decree of the trial Court, which had decreed the suit of the plaintiff, for the reasons given in paras No. 11 to 14 of the impugned judgment, which are reproduced as under :-

"11. The decree and judgment impugned before the lower Court are Exs.P.20 and Ex.P.21 on record and the array of the parties of the impugned decree reflects that the present appellant Raj Kumar and Isham Singh filed a suit against Kali Ram and Ram Singh. The present respondents and from the array of the parties, again, it is evident that Raj Kumar and Isham Singh could not claim any antecedent title over the property of Kali Ram and Ram Singh and Kali Ram and Ram Singh are uncles of Raj Kumar and Isham Singh and as per settled law nephew has no antecedent title or preexisting rights in the property of uncle as such rights can only be claimed in ancestral property in the hands of father or grand-father and as such in view of this factual preposition is established on record that the present appellant had no

antecedent title over the disputed property and when there was no antecedent title, there was no question for getting a declaratory decree passed. In these circumstances, the decree in question by itself was a creation of title for the first time and as such the learned lower Court has rightly applied the law laid down in "Bhoop Singh v. Ram Singh etc. 1996(1) PLR (SC) 559 : 1995(3) RCR 541 ."

12. In addition to this, the stand of present respondent Ram Singh before the lower Court was that he never appeared in the Court in Civil Suit No. 17/CS/98 titled as "Raj Kumar and another v. Kali Ram and another", decided on 2.5.1998 and by way of examining the expert witness PW-3 N.K. Jain, the plaintiff/respondent proved on record that the disputed signatures were not that of Ram Singh-respondent-defendant and mere arguments that expert is supposed to opine in favour of a party engaging him, is not going to change the position because from the cross-examination of PW-3, the veracity of witness could not be impeached and no other expert could be examined by the present appellants so as to prove on record that the disputed thumb impressions were that of Ram Singh, respondent and in these circumstances, the expert testimony cannot be ignored.

13. It was also contended that fraud as pleaded could not be established but again this contention is not tenable at all because when thumb impression of Ram Singh could not be proved, certainly, one is bound to infer that some other person was produced before the court who represented himself as Ram Singh and this fact itself is sufficient to arrive at a conclusion that there has been fraud by impersonation in getting the decree dated 2.5.1988 by the present appellants.

14. So far as decree in favour of respondents by his mother is concerned, that decree has not been challenged in the present case and without assailing that decree in a court of competent jurisdiction, at this stage, it cannot be claimed that mother of respondent Ram Singh was not competent to suffer decree in favour of respondent/Ram Singh."

2. I have heard the learned Counsel for the appellant who has tried to convince me that the findings of the Courts below are erroneous but I am not convinced with this submission firstly because there was no preexisting right in favour of the appellant and secondly it is not established on the record that respondents (plaintiffs) ever suffered a collusive decree in favour of the present appellant.

In this view of the matter, I do not see any illegality in the impugned judgment and decrees of the Courts below.

3. Revision dismissed.