(2008) 03 P&H CK 0062

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Dhan Raj and Another		APPELLANT
	Vs	
Sat Pal and Another		RESPONDENT

Date of Decision: March 24, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 35A
- Hindu Succession Act, 1956 - Section 10, 17, 3, 8, 9
- Registration Act, 1908 - Section 17

Citation: (2008) 4 CivCC 369 : (2008) 152 PLR 65

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

The plaintiffs-appellants have filed the present appeal challenging the judgments and decree of the Courts below whereby the suit of the plaintiffs for declaration and possession has been dismissed raising the following substantial questions of law:

1. Whether right in immovable property of the value of more than Rs. 100/- can only be transferred by a registered instrument in view of AIR 1996 S.C. 1967.

2. Whether Ram Sarup could make any alienation which is not in accordance with law?

3. Whether jats of Rohtak District who have a son had unrestricted power of alienation?

4. Whether appellate Court was justified in upholding the judgment of Trial Court even after reversing finding on major issues?

5. Whether collusive decree in which appellant is not a party can be called family settlement?

2. The case of the appellants is that Ram Sarup, father of plaintiff-appellants and defendant No. 5 was owner in possession of the properties in dispute which was inherited by him from his father Kanheya and the said property in his hands was ancestral qua plaintiff-appellants and defendant No. 5. On 18.11.1978, the said Ram Sarup died intestate and upon his death the plaintiffs-appellants and defendant No. 5 succeeded to his property in equal share i.e. 1/3rd each. The said Ram Sarup and the parties to the suit were governed by custom in the matters of alienation. After the death of Ram Sarup, respondents No. 1 to 4 began to assert that said Sh. Ram Sarup in his lifetime had bequeathed his property in their favour by way of a Will. However, the said Will, if any, is illegal and subsequent to that the defendants have based their claim on the disputed property on the basis of decree dated 9.10.1978 in Civil Suit No. 426 of 1978 allegedly passed in their favour and against Ram Sarup deceased. The said decree is illegal, void and ineffective against the rights of the appellant. They are in possession of the house to the extent of l/3rd share each. The defendants are not admitting the rights of the plaintiffs over the suit property to the extent of l/3rd each and hence this suit.

3. The respondents contested the suit pleading that the property in suit was self acquired property of Ram Sarup deceased and that Ram Sarup and the parties were not bound by any custom and rather they are governed by Hindu Law. It has been further pleaded by the respondent-defendants that the Will and decree are legal and binding upon the parties. From the pleadings of the parties the following issues were framed:

1. Whether the property in suit was ancestral in the hands of Ram Sarup qua plaintiff No. 1 and Tej Singh, defendant No. 5 as alleged? OPP

2. Whether the parties are governed by custom in matters of alienation as alleged? OPP

3. Whether the plaintiffs succeeded to the estate of Ram Sarup in shares specified in para 4 of the plaint? OPP

4. Whether the decree in suit No. 462 decided on 9.10.78 is ineffective, illegal and void and inoperative against the rights of the plaintiffs as alleged? OPP

5. Whether the plaintiffs are in possession of the property fully detailed in para 2(v) of the plaint? OPP

6. Whether the property in suit was the self acquired property of Ram Sarup ? OPD

7. Whether aforesaid Ram Sarup executed any valid Will of the property in favour of defendants No. 1 to 4? OPD

8. Whether the plaintiffs have no right to challenge the Will as alleged ? OPD

9. Whether the suit has been properly valued for purpose of Court fee and jurisdiction? OPP

10. Whether the suit is false and vexatious and the defendants are entitled to special costs u/s 35A CPC as alleged? OPD

11. Relief.

4. The trial Court under issues No. 1 and 6 held that property in suit was ancestral in the hands of Ram Sarup qua plaintiff-appellants and defendant No. 5. The issue No. 1 was decided in favour of the plaintiffs and issue No. 6 against the defendants. Under issue No. 2, on the basis of admission made by defendant-respondent No. 1 and his witnesses it was held by the trial Court that the parties are governed by custom in the matters of alienation. Issue No. 3 was decided against the appellants-plaintiffs and in favour of the defendants. Under issue No. 4 it was held that a father has unrestricted power of alienation of his ancestral property and thus, the decree in Civil Suit No. 462 decided on 9.10.1978 was not illegal. This issue also went against the plaintiff. Issue No. 5 was not contested by the defendants and therefore was decided in favour of the plaintiffs. Under issue Nos. 7 and 8, it was held that Ram Sarup executed a valid Will and plaintiffs-appellants have no right to challenge the same. Both the issues were decided in favour of the defendants. Issue Nos. 9 and 10 were not pressed and thus, the suit filed by the appellants on the basis of the findings on different issues given by the trial Court was dismissed vide judgment dated 28.1.1981.

5. The Lower Appellate Court vide judgment and decree dated 28.2.1981 held that Ram Sarup had no power to alienate his ancestral property by Will in favour of defendant-respondents No. 1 to 4. It was also held that the alienation of ancestral property made by Ram Sarup in favour of defendants-respondents vide decree passed in Civil Suit No. 462 dated 9.10.1978 was beyond challenge. It is pertinent to mention that before the Lower Appellate court it was also contended by the plaintiffs-appellants that in view of Section 3(i)(g) of the Hindu Succession Act, a testator (a Jat by birth residing in a rural area) is to be deemed to have died intestate in respect of the ancestral property which he could dispose of by Will under the Customary Law of Punjab and succession to that property would therefore, be governed by Sections 8 to 10 of the Act. However, the Lower Appellate Court found that the said argument in the present case was not available as Ram Sarup had left no property on his demise and as such the question of opening of succession to his property did not arise as he had already transferred his property to defendants No. 1 to 4 vide decree passed in Civil Suit No. 462 of 1978 on the basis of a family settlement. It dismissed the appeal. Hence this regular second appeal and the cross-objections.

6. Mr. Harminderjit Singh, learned Counsel for the appellants, has vehemently argued that the decree passed in Civil Suit No. 462 on 9.10.1978 on the basis of

which the appellants have been non-suited required registration as the same had created rights in the respondents for the first time. It has also been argued that there was no family settlement between the parties as there was no pre-existing right of the parties and the defendants who are the grandsons of Ram Sarup had no pre-existing right in the property in dispute and thus, the judgments and decrees of the Courts below are liable to be set aside and the appellants are entitled to the relief as prayed for. In support of his contention, learned Counsel for the appellants has relied upon the judgment of the Apex Court in Bhoop Singh Vs. Ram Singh Major and others, .

7. On the other hand, Mr. Alok Jain, learned Counsel appearing for the respondents has defended the impugned judgments and decrees of the Courts below and has argued that the decree based upon family settlement does not require registration and therefore, the present appeal has no merit and the same is liable to be dismissed. He has further argued that decree passed in Civil Suit No. 462 dated 9.10.1978 between the parties suffers from no illegality and the validity of the same cannot be gone into in the present suit in the absence of any allegation of fraud or misrepresentation. In support of his contention, Mr. Alok Jain, Advocate, counsel for the respondents has referred to documents (Annexures P-19 to P-22) to show that the basis of the decree was the family partition made between the parties to the suit regarding the property forming its subject matter about two years before the institution of the suit by which it came to be transferred to the plaintiffs in that suit, from the defendants and they had been holding possession of the same as owners since then. This fact was admitted by Ram Sarup-defendant.

8. I have heard learned Counsel for the parties and perused the record.

9. I find no force in the arguments raised by counsel for the appellants. Both the Courts below have given a categoric finding to the effect that the alienation of property made by Ram Sarup in favour of respondents No. 1 to 4 vide decree passed in Civil Suit No. 462 dated 9.10.1978 is beyond challenge and even in the present appeal also no such argument has been raised to challenge the findings of the trial Court on the question of authority of Ram Sarup to alienate the property in dispute. Once the right to make alienation of the property in dispute is not under challenge, nobody except Ram Sarup himself could have any right to make grievance against the said decree dated 9.10.1978 passed in Civil Suit No. 462 of 1978. The said decree-could have been challenged on the basis of fraud, if any, but no such challenge has been made against the said decree. Thus, the challenge made by the appellants to the decree dated 9.10.1978 passed in Civil Suit No. 462 of 1978 after the death of Ram Sarup is not legally sustainable and in fact the same appears to be without any legal right.

10. Now the only question which remains to be answered is whether the decree dated 9.10.1978 requires registration.

11. The Hon''ble Supreme Court of India in the case of Sahu Madho Das and Others Vs. Mukand Ram and Another, observed as follows:

Reliance is placed on the following in support of the contention that the brothers, having no right in the property purchased by the other''s money, could not have legally entered into a family arrangement. The observations are:

It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognizing the right of the others, as they had previously asserted it to the portions allotted to them respectively.

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These observations do not mean that some title must exist as a fact in the persons entering into a family arrangement. They simply mean that it is to be assumed that the parties to the arrangement had an antecedent title of some sort and that the agreement clinches and defines what that title is:

12. In the case of Ram Charan Das Vs. Girjanandini Devi and Others, , the Hon''ble Supreme Court held as follows:

Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a family. In this context the word ''family'' is not to be understood in a narrow sense of being a group of persons whom the law recognizes as having right of succession or having a claim to a share in the disputed property. The consideration for a family settlement is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst the relations. The consideration having passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be impeached thereafter.

13. In the aforesaid Ram Charan''s case (supra) the Hon''ble Apex Court further observed as follows:

The transaction of a family settlement entered into by the parties who are members of a family bona fide to put an end to the dispute among themselves, is not a transfer. It is not also the creation of an interest. For, in a family settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent by the other parties. Every party who take benefit under it need not necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary to show is that the parties are related to each other in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say, affection.

14. Again in the case of Kale and Others Vs. Deputy Director of Consolidation and Others, , the Hon''ble Apex Court observed as follows:

The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishers all its claims or titles in favour of such a person acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same.

It was further observed in the aforesaid Kale''s case (supra) as follows:

Even if bona fide disputes, present or possible which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

15. In the case of Jagdish and Others Vs. Ram Karan and Others, this Court had the occasion to deal with the similar controversy and had held, as per the law laid down in the cases of Ram Charan Dass (supra), Kale (supra) and Sahu Madho (supra), that the decree in question passed on a family settlement was not required to be compulsorily registered. Even in the case of Gurdev Singh and Others Vs. Kartar Singh and Others, this Court had held that the pre-existing right could also cover a claim of a member of larger family under an oral arrangement which is subsequently confirmed in the Court proceedings.

16. In Bhoop Singh''s case (supra) the Hon''ble Apex Court was dealing with the decree vide which the title in the suit property was sought to be conveyed and transferred to a person without any pre-existing title through the decree itself. In fact the decree under challenge in Bhoop Singh''s case (supra) may be noticed as follows:

It is ordered that a declaratory decree in respect of the property in suit fully detailed in the heading of the plaint to the effect that the plaintiff will be the owners in possession from today in lieu of the defendant after his death and the plaintiff deserves his name to be incorporated as such in the revenue papers, is granted in favour of the plaintiff against the defendant, in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct. Pleader''s fee fixed Rs. 16/-. It is further ordered that there is no order as to costs.

17. It is thus apparent that in Bhoop Singh''s case (supra) the Hon''ble Supreme Court of India had held that when the conveyance of transfer was effected through a consent decree, then the same was not permissible and in such a situation such consent decree was compulsorily registerable. However, if a plaint in the suit was filed on the basis of a past transaction or past family settlement for the recognition thereof through a declaration, then the declaration sought was merely with regard

to the existing facts on the date of the filing of the suit.

18. In Bhoop Singh''s case, the Hon''ble Apex Court had observed as under:

In Tek Bahadur Bhujil Vs. Debi Singh Bhujil and Others, , the Constitution bench of this Court considered the validity of the family arrangement and the question was whether it requires to be compulsorily registered u/s 17. This Court, while up-holding oral family arrangement, held that registration would be necessary only if the terms of the family arrangements are reduced into writing, A distinction should be made between the documents containing the terms and recital of family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of record on for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act. It was held that a memorandum of family arrangement made earlier which was filed in the Court for its information was held not compulsorily registerable and therefore it can be used in evidence for collateral purpose, namely, for the proof of family arrangement which was final and binds the parties. The same view was reiterated in Maturi Pullaiah and Another Vs. Maturi Narasimham and Others, , wherein it was held that the family arrangement will need registration only if it creates any interest in immovable property in present time in favour of the parties mentioned therein. In case where no such interest is created the document will be valid, despite it being non-registered and will not be hit by Section 17 of the Act.

19. Thus, it is apparent that in Bhoop Singh''s case the Hon''ble Apex Court was only dealing with a situation where the title was being conveyed and transferred for the first time through the consent judgment and decree and not a case where the said decree was based upon the past transaction.

20. There is another aspect of the matter which needs to be noticed at this stage. The Hon''ble Supreme Court of India in Bachan Singh v. Kartar Singh and Ors. (2002)131 P.L.R. 512 held that if the claim of the defendant was admitted by the plaintiff and on the basis of the said admission, a decree was passed and if there was no fraud in passing the decree, then the said decree was good and valid and could not be ignored on the ground that the same was not registered.

21. It may be seen that in the case in hand, vide decree dated 9.10.1978 passed by the Civil Suit No. 402 Ram Sarup had admitted the claim of the respondents (plaintiffs in that suit) and on the basis of the said admission of Ram Sarup, the decree was passed. It has already been noticed that the authority of Ram Sarup to alienate the property in question in favour of respondents No. 1 to 4 is beyond challenge. It is again a matter of fact that in the present case the decree dated 9.10,1978 has not been challenged on the ground of fraud etc. and therefore, the

said decree was good and valid and could not be ignored simply on the ground that the same was not registered.

22. Learned Counsel for the respondents has referred to documents Annexures P-19 to P-22 to show that the very basis of the decree was a family partition made between the parties to the suit regarding the property forming its subject matter and two years prior to the institution of the suit, by which it came to be transferred by the plaintiffs in that suit (now respondents in the instant case) and they had been holding possession of the same as owners since then. The appellants have failed to rebut the said contention of the respondents. Thus, on the basis of the above referred to judgments of the Apex Court and the settled proposition of law, it emerges that the Bhoop Singh''s case has no application to the facts of the present case. As the decree in question was suffered by Sh. Ram Sarup on the basis of a previous family settlement between the parties and the said Ram Sarup was fully competent to alienate the said property, decree in question does not require registration. Thus, the respondents have become owners of the property in dispute on the basis of decree dated 9.10.1978.

23. In view of the above, I find no merit in the present appeal and the same is hereby dismissed.

Cross-objections filed by the respondents are also dismissed as no arguments have been addressed on these objections. No order as to costs.