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**(2011) 07 P&H CK 0182**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 2611 of 2011 (O and M)

Dharampal

APPELLANT

Vs

Pale Ram and others

RESPONDENT

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**Date of Decision:** July 19, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 8, 100

**Citation:** (2011) 4 CivCC 775 : (2011) 164 PLR 192

**Hon'ble Judges:** Mehinder Singh Sullar, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Mehinder Singh Sullar, J.

As the Courts below duly recapitulated and described the factual matrix of pleadings and evidence brought on record by the parties in detail, therefore, there appears to be no necessity to again reproduce and repeat the same in this regular second appeal. However, the compendium of the facts, culminating in the commencement, relevant for disposal of the present appeal and emanating from the record, is that a large chunk of the land, including the land in dispute, was owned by the Proprietors/Khewatdars/Mushtarka Malkan of village Kakroi, Tehsil and District Sonapat. Om Parkash son of Kidara (proforma respondent No.5-defendant No. 1), earlier instituted the civil suit bearing No. 188 of 1984 titled as Om Parkash v. Dharambir, with respect of the entire land of the Proprietors/Mushtarka Malkan of the village. The suit was decreed on the basis of admission of Dharambir son of Sube by the trial Court by means of judgment and decree dated 07.03.1984 (Ex.P-5).

2. In order to further conceal their collusion, the said judgment and decree was stated to have been secretly challenged in another civil suit bearing No.922/929 of 1985, purporting to have been filed by Raj Singh son of Jai Lal and others-respondent Nos.6 to 8-defendant Nos.3 to 5), which was dismissed by the

civil court, by virtue of judgment and decree dated 31.07.1986 (Ex.P-7).

3. Likewise, Om Parkash-defendant No.1 was stated to have suffered another consent decree dated 14.05.2004 passed in Civil Suit No.374 of 2003 in respect of suit land in favour of Dharam Pal son of Sube Singh-appellant defendant No.6 during the pendency of the present suit.

4. Faced with the situation, thereafter, Pale Ram, Ex-Sarpanch, Partap Singh son of Ram Sarup, Zile Singh son of Harnam and Ran Singh son of Ghasi Ram, contesting respondent Nos. 1 to 4-plaintiffs (for brevity the plaintiffs) filed the present suit for a decree of declaration, in a representative capacity under Order 1 Rule 8 CPC, against the defendants, challenging the impugned collusive indicated civil court decrees, inter alia, on the following grounds:-

a) That the suit No. 188/84 titled as Om Parkash v. Dharambir was filed by Om Parkash and that suit was decreed as Dharambir was colluded with Om Parkash.

b) The suit land was owned by proprietors but none of the proprietors was arrayed as party to the suit and thus, judgment and decree was obtained without notice to the proprietors.

c) The Gram Panchayat was also a co-sharer in the suit land, but Gram Panchayat was not impleaded as party. Further, the Ld. Court while passing the judgment and decree, did not appreciate the evidence.

d) Similarly, the judgment and decree in civil suit No.922/929 of 1985 are also illegal, null and void. The suit was filed by Raj Singh in representative capacity, under Order 1 Rule 8 CPC, but no permission was granted by the Court. Even otherwise, no service was effected upon the proprietors.

e) In suit No.922/929 of 1985, defendants manipulated to forge the thumb impression/signatures of some of the plaintiffs in connivance with Raj Singh-plaintiff. The alleged challenge by Raj Singh etc. against judgment and decree in civil suit No.188 of 1984 was fake and superficial and in fact Raj Singh and others, wanted to help defendants No.1 & 2 in maintaining the judgment and decree dated 7.3.1984.

f) Om Parkash-defendant No.1 in the present suit has suffered a consent decree dated 14.05.2004 in respect of the suit land in favour of Dharampal son of Sube, during the pendency of the present suit. Dharampal-defendant No.6 obtained the judgment and decree without any notice and in the absence of plaintiffs. Plaintiff Om Parkash in suit No.188 of 1984 and Dharampal plaintiff in suit No.374 of 2003 had no antecedent title in the suit land. Therefore, the decrees were passed in their favour just to create rights for the first time. So, the decrees were compulsorily required registration.

5. The case set up by the plaintiffs, in brief, insofar as relevant, was that in the wake of suits filed by the defendants, the impugned collusive decrees obtained on the basis of admission, are illegal, result of fraud and misrepresentation. It was explained that the defendants did not have any power/authority to claim the ownership of the entire suit land of all the Proprietors/Mushtarka Malkan. Even the defendants did not implead the Grain Panchayat as a party, which was also a co-owner in the suit property. The plaintiffs (herein) came to know about the illegal decrees only when the defendants threatened them to interfere in their possession over the suit property.

6. Levelling a variety of allegations and narrating the sequence of events, in all, the plaintiffs claimed that they are joint owners and in possession along with other co-sharers/Mushtarka Malkan of the village and the impugned collusive decrees obtained by the defendants, by playing fraud, are illegal, nonest, null and void and inoperative on their rights. They asked the defendants to admit their claim, but in vain, which necessitated them to file the present suit. On the basis of aforesaid allegations, the plaintiffs filed the suit against the defendants for a decree of declaration etc., challenging the impugned indicated collusive decrees, in the manner depicted hereinabove.

7. The defendants contested the suit and filed their written statement. Defendant No.1 filed his separate written statement, inter alia, pleading certain preliminary objections of, maintainability of the suit, limitation, non-joinder and misjoinder of necessary parties, cause of action and locus standi of the plaintiffs. According to the defendants, Om Parkash-defendant (herein) has filed the civil suit in a representative capacity under Order 1 Rule 8 CPC, which was rightly decided in his favour on the basis of admission of Dharambir-defendant, by means of impugned judgment and decree dated 07.03.1984 (Ex.P-5). Similarly, another suit was claimed to have been rightly decided vide impugned judgment and decree dated 31.07.1986. The forging of thumb impression/signatures of Raj Singh and other co-owners/proprietors by Om Parkash-defendant No.1 was also denied. In all, defendant No.1 claimed that the impugned decrees are legal and binding on the plaintiffs as well. The remaining defendants have also toed the line of the pleadings, as contained in the written statement tiled by defendant No.1. It will not be out of place to mention here that the defendants have stoutly denied all other allegations contained in the plaint and prayed for dismissal of the suit.

8. Controverting the allegations contained in the written statement and reiterating the pleadings of the plaint, the plaintiffs filed the replication. In the wake of pleadings of the parties, the trial Court framed the following issues for proper adjudication of the case:-

1. Whether the judgments and decrees passed in Civil Suit No.188 of 1984 vide dated 7.3.1984, in Civil Suit No.922/929 of 1985, vide dated 31.7.1986 and in Civil Suit No.374 of 2003 vide dated 14.05.2004, are illegal, null and void and liable to be set

aside on the grounds mentioned in the plaint? OPP

2. Whether the suit is not maintainable in the present form? OPD

3. Whether the suit is time barred? OPD

4. Whether the suit is not properly valued for the purposes of Court fee? OPD

5. Whether the suit of the plaintiff is barred by principle of res-judicata?

6. Relief.

Thereafter, the case was slated for evidence of the plaintiffs.

9. The plaintiffs in order to substantiate their claim, examined Mohan Lal, Ahlmad in the court of ADJ, Sonapat as PW1, Suraj Bhan as PW3, Pale Ram as PW4, while plaintiff Partap Singh himself appeared as his own witness as PW2 in oral evidence. They have also tendered documents, Exhibits P1 to P8, PW6/A to PW6/C, PW8/A, PW8/B, PX and Ex.PY in documentary evidence.

10. The defendants in order to rebut the oral as well as the documentary evidence brought on record by the plaintiffs examined Dharampal son of Sube Singh as DW1, besides tendering documents in the evidence.

11. The trial Court, after taking into consideration the evidence on record, decided issue No.1 in favour of the plaintiffs, while the remaining issues were answered against the defendants. In view of the findings on various issues, the trial Court decreed the suit of the plaintiffs, by means of impugned judgment and decree dated 20.08.2007.

12. Aggrieved by the decision of the trial Court, Dharampal son of Sube Singh-appellant-defendant No.6 filed the appeal, which was dismissed as well by the first Appellate Court, through the medium of impugned judgment and decree dated 19.03.2011.

13. Appellant-defendant No.6 still did not feel satisfied with the impugned judgments and decrees of the Courts below and preferred the present regular second appeal. That is how, I am seized of the matter.

14. Having heard the learned counsel for the appellant-defendant No.6, having gone through the record with his valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant appeal in this respect.

15. Ex facie, the argument of the learned counsel that since, defendant No.1 filed the earlier suit No. 188/84 in a representative capacity, so, the impugned judgment and decree dated 07.03.1984(Ex.P-5) and the subsequent indicated decrees are bindings on the plaintiffs, is not only devoid of merit but misconceived as well.

16. As is evident from the record that, the proprietors/Mushtarka Malkan are co-owners of a big chunk of the land including the land in dispute. Defendant No.1

filed the suit in the garb of Order 1 Rule 8 CPC against Dharambir-defendant No.2, even without impleading the Gram Panchayat and other co-owners as a party. The mandatory permission was not granted by the Courts to the plaintiffs to pursue the suits in a representative capacity on behalf of all the proprietors, as contemplated under Order 1 Rule 8 CPC. In the absence of the same, the decree passed merely on the admission of Dharambir on behalf of all the co-sharers, is a nullity, as other co-sharers cannot be deprived of their valuable rights in the property in dispute in this manner.

17. What is not disputed here is that the earlier suit titled as Om Parkash v. Dharambir, was filed on the basis of oral family settlement, which was claimed to have been taken place between them, being close relations. Defendant No.2-Dharambir appeared and admitted the claim, without placing any document on record with regard to his share in the land of proprietors/Mushtarka Malkan, or their relationship, culminating into the family settlement. He made the admission on behalf of all the proprietors, without any authority and legal basis. Thus, he committed the fraud with the court by way of filing the admitted written statement, as they wanted to usurp the land of the proprietors, without adopting the legal procedure.

18. Likewise, in the second suit, no permission was granted by the court to the plaintiff therein to file and pursue the suit on behalf of all the proprietors, in view of Order 1 Rule 8 CPC. So much so, the plaintiff did not file any list of the proprietors, nor any notice was served upon any of the co-owner of the suit land.

19. Possibly, no one can dispute with regard to the proposition of law that, where numerous persons are to be sued for the benefit of all the persons interested, the mandatory permission of the Court under Order 1 Rule 8 CPC, is a condition precedent for pursuing such suits and where such permission is not granted, the suits would be treated to have been filed by the plaintiffs in their individual capacity and not in a representative capacity. It is not a matter of dispute that no legal mandatory permission was granted to the plaintiffs, to pursue the cases on behalf of all the co-owners, in any of the earlier suits by the Court, as envisaged under Order 1 Rule 8 CPC. In the absence of the same, such decrees would be inoperative on the rights of other co-owners.

20. Thus, the grounds of challenge pressed into service by the plaintiffs that the defendants have obtained the earlier decrees, by playing fraud with the Court, have considerable force and are tenable. Such decrees obtained by the defendants by playing fraud, is not only arbitrary, illegal and nullity, but nonest in the eyes of law as well.

21. Therefore, to me, suppression of material facts and want of proper permission under Order 1 Rule 8 CPC, would amount to a fraud with the court and the civil court is competent to declare such collusive decrees as illegal, which have been obtained

by committing the fraud on the Court. This matter is not res integra and now is well settled.

22. An identical question came to be decided by the Hon"ble Apex Court in case titled as Sukhnandan Singh etc. v. Jamiat Singh and others, 1971 P.L.J. 278, and it was held as under: -

Collusion in judicial proceedings is normally associated with secret arrangement between two persons that the one should institute a suit against the other in order to obtain the decision of a judicial tribunal for some sinister purpose. In such a proceeding the claim put forward is fictitious, the contest feigned or unreal and the final adjudication a mask, designed to give false appearance of a genuine judicial determination, and this is generally done with the object of confounding third parties. In such a proceeding the contest is a mere sham. Even in the wider sense the word collusion suggests a deceitful agreement or compact between two or more persons to do some act in order to prejudice a third person or for some improper purpose.

23. Again, reiterating the concept of fraud, the Hon"ble Apex Court in case [A.V. Papayya Sastry and Others Vs. Government of A.P. and Others](#), has ruled that fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud, one gains at the loss of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act, which vitiates all judicial acts, whether in rem or in personam. It was further held that any judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eyes of the law. Such a judgment, decree or order by the first court or by the final court has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

24. Thus, the contrary arguments of the learned counsel for the appellant-defendant No.6 that the indicated collusive decrees are legal and binding, *stricto sensu* deserve to be and are hereby repelled under the present set of circumstances, as the law laid down by the Hon"ble Apex Court in Sukhnandan Singh etc. and A.V.Papayya Sastry and others"s cases (*supra*), *mutatis mutandis* is applicable to the facts of the present case and is the complete answer to the problem in hand. Therefore, keeping the law laid down by the Hon"ble Apex Court into focus, to me, the Courts below have rightly decreed the suit of the plaintiffs in this relevant connection.

25. Moreover, having completed all the codal formalities and on ultimate analysis of the evidence on record, the trial Court has recorded a finding of fact that the earlier indicated collusive decrees are the result of fraud & nullity and not binding on the rights of the plaintiffs. Not only that, the decision of the trial Court was upheld by the first Appellate Court, by virtue of impugned judgment and decree dated

19.03.2011, which in substance is, as under:-

First of all, we discuss legality and validity of decree dated 7.3.1984 (Ex.P-5) passed in Civil Suit No.188 of 1984 titled as Om Parkash v. Dharambir. In that civil suit, it was own case of Om Parkash, plaintiff that the suit land measuring 194 kanals 4 marlas comprised in Khewat No.379 was owned by Mushtarka Malkan. To the utter dismay of this court that no proprietor of the village including Gram Panchayat was formally impleaded in the suit nor permission under Order 1 Rule 8 CPC for filing the suit in representative capacity could be sought. In that suit, Om Parkash by filing plaint (Ex.P-1) also mentioned in para No.2 that land was owned by Mushtarka Malkan but in para No.3 pleaded that six months back an oral family settlement had taken place between him and Dharambir by virtue of which the latter agreed to transfer ownership of suit land in his favour. It is intriguing that the land being owned by Mushtarka Malkan was decreed on the basis of admission made by a single proprietor when no notice of suit was issued to other proprietors whose numbers was between 500-600 as per deposition of DW-1 Dharam Pal, appellant in the suit, involving instant appeal. The active collusion between Om Parkash and Dharambir is seen from the fact that on the following day of institution of suit that is on 7.3.1984, it was decreed and consequently fraud was played upon all the proprietors of the village including Gram Panchayat, Kakroi. Now we have to see whether such kind of decree in law is legal and valid. Certainly, the answer comes in negative. Further subsequent decree passed on 31.7.1986 in Civil Suit No.922/929 of 1985, titled as Raj Singh and others v. Om Parkash and another while challenging legality and validity of the aforesaid decree dated 7.3.1984, Ex.P-5, also comes out to be a nullity as neither in the suit nor in the subsequent filed civil suit titled as Dharam Pal v. Ram Kishan etc., due notice of suit was ever issued to plaintiffs/respondents herein, rather they were wrongly shown either having been proceeded against ex parte, so as to avoid honest and effective contest of the lis, involved therein.

26. No other meaningful argument has been raised by the learned counsel for the appellant-defendant No.6, to assail the findings of the Courts below. All the remaining contentions, pertaining to the appreciation of evidence, now sought to be urged on his behalf, have already been duly considered and dealt with by the Courts below, in this relevant direction.

27. Above all, having scanned the admissible evidence in relation to the pleadings of the parties, the Courts below have recorded the well-articulated and well-reasoned concurrent finding of facts that the earlier suits filed by the defendants and collusive decrees are null & void, illegal and result of playing fraud on the Court. Such pure concurrent findings of facts based on the evidence, cannot possibly be interfered with by this Court, while exercising the powers conferred u/s 100 CPC, unless and until, the same are illegal and perverse. No such patent illegality or legal infirmity has been pointed out by the learned counsel for the appellant, so as to take a contrary view, than that of the well-reasoned decision arrived at by the Courts

below, in this respect.

28. Meaning thereby, the entire crux revolves around the re-appreciation and re-appraisal of the evidence on record, which is not legally permissible and is beyond the scope of second appeal. Since no question of law, much-less substantial, is involved in the second appeal, in view of the law laid down by Hon"ble the Apex Court in case [Kashmir Singh Vs. Harnam Singh and Another](#), , so, no interference is warranted in the impugned judgments and decrees of the Courts below, as contemplated u/s 100 CPC, in the obtaining circumstances of the instant case.

29. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the appellant.

30. In the light of aforementioned reasons, as there is no merit, therefore, the instant appeal is hereby dismissed as such.