(2007) 05 P&H CK 0195

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 250 of 2004

Parmeshwari and Others	APPELLANT
Vs	
Hans Kaur and Others	RESPONDENT

Date of Decision: May 11, 2007

Acts Referred:

- Evidence Act, 1872 - Section 44
- Registration Act, 1908 - Section 17

Citation: (2007) 4 CivCC 152 : (2007) 4 RCR(Civil) 250

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Advocate: Vijay Pal Singh, for the Appellant;

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.

This Regular Second Appeal has been directed by the plaintiffs against the judgments and decree, passed by both the courts below, whereby their suit for declaration and permanent injunction has been dismissed.

2. The brief facts of the case are that Smt.Bhagwani (defendant No. 1) is mother of plaintiffs Ram Mehar and Mir Singh and defendant No.5 Phul Singh. She was owner in possession of 12/32 share of the agricultural land measuring 154 kanals 16 marlas, situated within the revenue estate of Village chhudani. With regard to the said land, she suffered a collusive decree in favour of defendants No.2 to 4, her grand-sons (sons of defendant No.5) in civil suit No.432 of 1993, titled Ram Kumar etc., versus Bhagwani. In the instant suit, the plaintiffs have challenged the said decree alleging therein that the said property was ancestral property in the hands of Bhagwani and in the year 1990, a family settlement had taken place between the parties, by virtue of which defendant No. 1 had relinquished her share in the suit property in favour of the plaintiffs and defendant No.5 in equal shares. By virtue of

the said family settlement, the three sons were put in actual physical possession of the suit property. However, subsequently defendant No.2 and 4 hatched a conspiracy with defendant No.5 and got suffered a collusive decree in their favour from defendant No. 1 with regard to the suit land, owned by her.

3. The defendants contested the suit by taking the plea that defendant No. 1 was the absolute owner of the suit land and she willingly and voluntarily had suffered a decree in favour of defendants No.2 to 4 admitting the factum of family settlement, which was arrived at between them and her, prior to the passing of the decree. It was also pleased that the plaintiffs have no locus standi to file the instant suit during the life time of defendant No. 1, as the same was her self acquired property and only she could have challenge the alleged collusive decree.

4. I have heard counsel for the parties and gone through the impugned judgments and decree, passed by both the courts below.

5. The trial court, after placing reliance upon the judgment of the Supreme court in Bhoop Singh v. Ram Singh Major & Ors., 1996 (1) CCC 210 (S.C.) : 1996 (1) ACJ 71 : (1996) 112 PLR 559 (SC), took the view that the collusive decree dated 15.06.1993 created right in favour of defendants No.2 to 4 for the first time, as they had no antecedent and pre-existing right in the suit property, therefore, on account of non-registration of the said collusive decree, the same is illegal and not binding on the plaintiffs. However, on another issue, the trial Court has held that the suit land was the personal property of defendant No.1, therefore, the plaintiffs could not have challenged the collusive decree, as before the death of defendant No.1, they had no interest in the suit land. Accordingly, suit of the plaintiffs was dismissed.

6. The first appellate court affirmed the finding of the trial Court on issue No.2 to 7. It has been held that mutation No. 1737 (Ex.P 15) clearly shows that after the death of Shish Ram, predecessor of the parties, his land was inherited by seven legal heirs i.e. two plaintiffs, defendants No. 1 and 5 and his three daughters,namely Risalo, Hans Kaur and Chandro, in equal shares, to the extent of 1/7th share each. Thus, the 1/7th share, which was inherited by defendant No.1 became her personal property, which is under dispute in this suit. In view of these facts, it has been held that the suit property is not the ancestral property or joint Hindu family property in the hands of defendant No. 1. It has also been held by the first appellate court that the family settlement alleged by the plaintiffs has also not been proved, as the same was never got incorporated in any revenue record. Therefore, it has been held that the plaintiffs have no locus standi to challenge the consent decree, which was voluntarily suffered by defendant No. 1 in favour of defendants No.2 to 4. The first appellate court has reversed the finding of the trial court on issue No. 1, whereby it was held that on account of non-registration of the decree, same was illegal and not binding on the rights of the plaintiffs. In this regard, the following finding has been recorded by the first appellate court:-

"15. I find force in the arguments of learned counsel for the defendants/respondents No.2 to 5 because a perusal of Ex.P2 and Ex.Dl, i.e. the copies of the written statement as filed by present defendant/respondent No.1 Bhagwani Devi as defendant in the above said civil suit in which the decree dated 15.06.1993 was passed, reveals that she had admitted the entire claim of the plaintiffs, the present defendants/respondents No.2 to 4 in the above said civil suit and a perusal of the copy of the judgment dated 15.06.1993, i.e. Ex.D7, reveals that the same was passed on the basis of admission of the defendant regarding the claim of the plaintiffs in the above said civil suit. In these circumstances, the observations as made by Hon''ble Supreme Court in Bachan Singh (supra) became fully applicable to the present case and it is held that the decree dated 15.06.1993 did not require registration and it cannot be held to be ineffective due to its non-registration. In these circumstances, the findings of learned lower Court, as returned in favour of the plaintiffs by observing that the judgment and decree dated 15.06.1993, as passed in &favour of defendants/respondents No.2 to 4 are in effective, cannot be upheld and the same are liable to be reversed and it has to be held that the plaintiffs/appellants have rot been able to establish on the record that the above said judgment and decree are null and void."

7. Learned counsel for the appellant-plaintiffs though could not controvert the findings recorded by the courts below on issues No.2 to 7, but he submits that the decree dated 15.06.1993 is bad in law on account of its non-registration, as when the collusive decree was suffered by defendant No.1 in favour of defendants No.2 to 4, defendants No.2 to 4 were havingno pre-existing right in the property. It is alleged that the said decree was got passed by making the averment that there was family settlement between defendant No. 1 and defendants No.2 to 4, whereas without associating plaintiffs and defendant No.5, there could not have been any family settlement. He submits that in the present suit, defendants have failed to prove the said family settlement. Thus, he contends that on the date, the said decree was passed, defendants No.2 to 4 were having no pre-existing right in the suit property and if any right was created, the same was created for the first time on the date of passing of the decree, therefore, the said decree being not registered is illegal and not binding.

8. I do not find any substance in the aforesaid contention of learned counsel for the appellants. Recently the Supreme Court in Som Dev & Ors. v. Rati Ram & Ors., 2006 (3) ACJ 585 (S.C.) : 2006 (4) CCC 427 (S.C.) has held that if a collusive decree is suffered on the basis of admission, admitting the preexisting right of the plaintiff in the suit land, then such decree does not require registration. It has been held that if a decree creates rights for the first time, the same requires registration, as has been held in Bhoop Singh''s case (supra), but if the decree recognizes the pre-existing rights, the same does not require any registration. In this regard, the Supreme court has observed as under:-

"Therefore, it was a case of the right being created by the decree for the first time unlike in the present case. In paragraph 13 of that Judgment it is stated that the Court must enquire whether a document has recorded unqualified and unconditional words of present demise of right,title and interest in the property and if the document extinguishes that right of one and seeks to confer it on the other, it requires registration. But with respect, it must be pointed out that a decree or order of a Court does not require registration if it is not based on a compromise on the ground that clauses (b) and (c) of Section 17 of the Registration Act are attracted. Even a decree on a compromise does not require registration if it does not take in property that is not the subject matter of the suit. A decree or order of a Court is normally binding on those who are parties to it unless it is shown by resort to Section 44 of the Evidence Act that the same is one without jurisdiction or is vitiated by fraud or collusion or that it is avoidable on any ground known to law. But otherwise that decree is operative and going by the plaint language of Section 17 of the Registration Act, particularly, in the context of sub-clause (vi) of sub-section(2) in the background of the legislative history, it cannot be said that a decree based on admission requires registration. On the facts of that case, it is seen that their Lordships proceeded on the basis that it was the decree on admission that created the title for the first time. It is obvious that it was treated as a case coming u/s 17(1)(a) of the Act, though the scope of Section 17(2)(vi) of the Act was discussed in detail. But on the facts of this case, as we have indicated and as found by the courts, it is not a case of a decree creating for the first time a right, title or interest in the present plaintiff and his brother. The present is a case where they were putting forward in the suit a right based on an earlier transaction of relinquishment or family arrangement by which they had acquired interest in the property scheduled to that plaint. Clearly, Section 17(1)(a) is not attracted. It is interesting to note that their Lordships who rendered the judgment in Bhoop Singh themselves distinguished the decision therein in S. Noordeen Vs. S. Thiru Venkita Reddiar and others, on the basis that in the case of Bhoop Singh there was no pre-existiny right to the properties between the parties, but a right was sought to be created for the first time under the compromise. Their Lordships proceeded to hold that in a case where the plaintiff had obtained an attachment before judgment on certain properties, the said properties would become subject matter of the suit and a compromise decree relating to those properties came within the exception in Section 17(2)(vi) of the Act and such a compromise decree did not require registration. Merely because the defendant in that suit in the written statement admitted that arrangement pleaded by the plaintiff it could not be held that by that pleading a right was being created in the plaintiffs and a decree based on such an admission in pleading would require registration. We are satisfied that the decision in Bhoop Singh (supra) is clearly distinguishable on facts. We may notice once again that all the courts have found that it was as a part of a family settlement that the defendant in the earlier suit relinquished his interest in favour of the present plaintiff and his brother and such a family arrangement has been held even in

Bhoop Singh (supra) not to require registration."

9. In view of the above, I do not find any merit in the instant appeal.

10. No substantial question of law is either involved in this appeal or has been raised counsel for the appellants.

11. Dismissed.