

(1996) 03 P&H CK 0118

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 1013 of 1987

Balbir Singh

APPELLANT

Vs

Bant Singh

RESPONDENT

Date of Decision: March 23, 1996**Citation:** (1996) 2 CurLJ 613 : (1996) 3 RCR(Civil) 351**Hon'ble Judges:** R.L.Anand, J**Advocate:** H.S. Awasthy, Advocate, Jagmohan Singh Chowdhry, Advocate., Advocates for appearing Parties

Judgement

R.L. Anand, J.

This is a regular second appeal filed by Balbir Singh and his wife Joginder Kaur and has been directed against the judgment and decree dated 4th November, 1986 passed by the Additional District Judge, Patiala, whereby the learned Additional District Judge dismissed the appeal of the defendantsappellants against the judgment and decree dated 8th December, 1983 passed by the Sub Judge Ist Class, Bassi Pathanan, then part of District Patiala and now in District Fatehgarh Sahib (Punjab).

2. Brief facts of the case are that plaintiff Bant Singh, resident of Sirhind City, filed a suit for declaration to the effect that the collusive decree dated 19.10.1981 passed in Civil Suit No. 346 of 24.9.1981, Balbir Singh and Joginder Kaur v. Chet Singh is null void and is liable to be set aside regarding the agricultural land and the house mentioned in head note of the plaint of the suit, with a prayer that defendants Nos. 1 and 2, namely, Balbir Singh and wife Joginder Kaur be restrained from alienating or transferring the suit land as well as the house in question in any manner. Prem Kaur (widow of Chet Singh), Harbans Kaur, Angrez Kaur and Tej Kaur (daughters of Chet Singh) and Harbans Singh (son of Chet Singh) were added as defendants Nos. 3 to 7, respectively. The case set up by the plaintiff was that he and the defendants were the members of the Joint Hindu Family. The suit property was ancestral. The plaintiff previously filed a suit for joint possession of the land mentioned at letter 'B'

in the head note against Chet Singh, in which Chet Singh was restrained from alienating the suit property and the case was finally decided on 25th February, 1982. Later on Chet Singh, father of the plaintiff, transferred the suit property in the names of defendants Nos. 1 and 2, namely, Balbir Singh and his wife Joginder Kaur through a collusive decree without any right and thereby the plaintiff has been devoid of his share. The notice of the suit was given to the defendants. Joint written statement was filed by defendants Nos. 1 to 3 in which they pleaded that the suit property is not the ancestral property and that the defendants are Jats and are governed by the Customary Law of Punjab. Defendants Nos. 1 and 2 were given the suit property through an oral family settlement and by a decree of the Civil Court. The said decree is legal and valid. The plaintiff was separated by Chet Singh deceased, who had every right to give the land to defendants Nos. 1 and 2 in an oral family settlement and that the plaintiff had no interests in the suit property. The mutation has also been effected on the basis of the decree in favour of defendants Nos. 1 and 2 in a right manner and that the suit of the plaintiff is not maintainable in the present form. Defendants Nos. 5 and 6 filed separate written statements and they took the stand that the suit property is ancestral, which was in the name of Chet Singh and now the same has been mutated in the names of the parties. The plaintiff filed replication to the written statement of the contesting defendants, in which he reiterated his allegations made in the plaint by denying those of the written statements and from the above pleadings of the parties, the trial Court framed the following issues:

1. Whether the suit is liable to be stayed under Section 10 of the CPC ? OPD.
2. Whether the plaintiff has no locus standi to file the present suit ? OPD.
3. Whether the suit is not maintainable in the present form ? OPD.
4. Whether the property in suit is ancestral property of the plaintiff and the defendants ? OPP.
5. Whether the decree dated 19.10.1981 in suit No. 346 is null and void ? OPP.
6. Whether the plaintiff is entitled to declaration prayed for ? OPP.
7. Whether the plaintiff is entitled to the injunction prayed for ? OPP.
8. Relief.

The parties led oral and documentary evidence in support of their case and the findings of the trial Court were as follows:

On issues Nos. 1 and 2 the trial Court stated that these two issues were not pressed by the defendants at the time of the arguments. In these circumstances these issues would be deemed to have been given up. Issue No. 3 was decided in favour of the plaintiff and against the defendants. Issue No. 4 was decided in favour of the plaintiff, treating the suit property as ancestral between the parties to the suit. Issue

No. 4 was decided in favour of the plaintiff, treating the suit property as ancestral between the parties to the suit. Issue No. 5 was also decided in favour of the plaintiff and the impugned decree dated 19.10.1981 was held to be null and void. Issues Nos. 6, 7 and 8 were also decided in favour of the plaintiff. Resultantly the suit was decreed as prayed for.

3. Defendants Nos. 1 and 2 Balbir Singh and his wife Joginder Kaur filed appeal in the Court of Additional District Judge against the judgment and decree of the trial Court and the appeal was also dismissed, but on different reasons. The first appellate Court held that the property in the hands of Chet Singh was not ancestral because it had come from his father Jiwan Singh under a Will. The first appellate Court held that the properties received from the father under a Will or gift will not be treated as ancestral property. In other words, the disputed property was held to be selfacquired property of Chet Singh. Treating this property as selfacquired, still it was held that said Chet Singh could not give the property in dispute to the defendantsappellants without a registered deed. In this regard reliance was placed on Nachhattar Singh v. Jagir Kaur, AIR 1986 Punjab and Haryana 197. The first appellate Court also held that the impugned decree is against the provisions of Section 54 of the Transfer of Property Act and also against the provisions of Section 17 of the Registration Act even if it is held that there was no fraud or collusion in obtaining the decree. Reliance was also placed on Raghbir Singh v. Siri Chand, 1954 PLJ 562. Resultantly, vide the impugned judgment dated 4th November, 1986 the learned Additional District Judge, Patiala, dismissed the appeal with costs. Aggrieved by the judgments and decrees of the trial Court as well as of the Ist appellate Court present appeal has been filed by Balbir Singh and his wife Joginder Kaur.

4. I have heard the learned counsel for the parties and with their assistance have gone through the record of this case.

5. The solitary point for consideration is whether the decree dated 19.10.1981 suffered by Chet Singh in Civil Suit No. 346 of 24.9.1981 can be said to be nullified visavis the rights of the plaintiff or not. The decree is Ex. P2 on the record and it would show that the suit was instituted on 24.9.1981 by Balbir Singh and his wife Smt. Joginder Kaur against Chet Singh. It was a suit for declaration of ownership and for joint possession. The suit was decreed on 19.10.1981 within 25 days of the institution of the suit. If the suit property was ancestral one, as held by the trial Court, then plaintiff Bant Singh had acquired interest by birth in it and Chet Singh was not competent to transfer the property in favour of his other son Balbir Singh and his wife Joginder Kaur by ignoring the interests of other coparceners. If Chet Singh has got the property through his father Jiwan Singh by a Will, as is evident from the record, the property in the hands of Chet Singh would be considered as selfacquired property. In that eventuality, Balbir Singh does not any interest by birth. It has been observed by the first appellate Court that since Chet Singh got the property from his father Jiwan Singh by Will, and rightly too, then the property in the

hands of Chet Singh would be considered as nonancestral and will be deemed as his personal property. Once the property in the hands of Chet Singh is considered as his personal property, then by a collusive decree he was not competent to transfer the title in favour of his other son Balbir Singh and his wife Joginder Kaur because Balbir Singh and Joginder Kaur had no preexisting right in the property held by Chet Singh, who got the property from his father Jiwan Singh. The question of oral family settlement did not arise. Learned counsel for the appellants has relied upon the judgment of this Court in R.S.A. No. 3511 of 1986 (Joginder Kaur v. Smt. Mohindro) where it was held that on relying the judgment passed in R.S.A. No. 2061 of 1987 (Gurdev Kaur v. Mehar Singh, 1989(2) R.C.R.(Rent) 625 : 1989(2) R.R.R. 499) decided on 28.7.1988, that title in immovable property of the value of Rs. 100/ or more can be conveyed by a compromise decree without registration and that a compromise decree did not require registration and can be led into evidence. However, the learned counsel appearing on behalf of the respondents, Shri H.S. Awasthy has relied upon an authority of the Hon"ble Supreme Court reported as Bhoop Singh v. Ram Singh Major, 1995(3) RRR 541(SC) : 1996 Law Ref. 1 (Vol. 11), where it was held: "When the document purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest therein, whether vested or contingent, it has to be registered compulsorily. 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 included the essential terms of the same; if the document including a compromise memo. extinguishes the rights of one and seeks to confer right, title or interest in praesenti in favour of the other, relating to immovable property of the value of Rs. 100 and upwards, the document or record or compromise memo. shall be compulsorily registered."

The counsel for the appellants has not been able to show that Balbir Singh and his wife Smt. Joginder Kaur had preexisting rights in the property subjectmatter of the decree (Ex. P2) and that the decree dated 19.10.1981 has not created any individual right in favour of his claims. Therefore, it has to be inferred that on a decree (Ex. P2) right, title or interest was being created itself in favour of the appellants Balbir Singh and his wife Smt. Joginder Kaur. In these circumstances, the decree (Ex. P2) does not stand to the test of scrutiny of the dictum of the Hon"ble Supreme Court and for this reason I am not inclined to follow the judgment of this Court. Learned counsel for the appellants has not been able to show any law contrary to the law laid down by the Hon"ble Supreme Court.

6. Learned counsel for the appellants has also drawn my attention to Ex. P4, i.e., the judgment dated 25.2.1982 of the earlier suit when Bant Singh (present respondent) filed a suit for joint possession and for permanent injunction, in which he incorporated two sets of properties and while deciding issue No. 1, the Court of Sub Judge Ist Class, Bassi Pathanan (then part of District Patiala) held that all the persons who acquire by birth an interest in the joint or coparcenary property are the

coparceners and that plaintiff Bant Singh was a coparcener with Chet Singh and his brothers Balbir Singh etc. Learned counsel for the appellants wanted to contend that part of the property denoted by head note 'B' was held to be ancestral and part of the property as denoted by the letter 'A' can be considered as nonancestral. The counsel wanted to conclude that the suit of the plaintiff Bant Singh is not maintainable. The argument is devoid of any merit. If we examine this argument from any angle of vision, the appellants have no case because if the property in the suit is held to be ancestral, then Bant Singh gets an interest in it by birth treating it as the coparcenary property. If it is held to be nonancestral property in the hands of Chet Singh, he could not pass on the same to defendants Balbir Singh and his wife Joginder Kaur by suffering consent decree because these defendants had no preexisting rights in their favour, and any decree against the provisions of the Registration Act and the Transfer of Property Act is bound to be held as void.

7. Net result is that the present appeal is devoid of any merit and the same is hereby dismissed with costs. The counsel's fee is assessed at Rs. 500/.