

(2014) 05 P&H CK 0510

High Court Of Punjab And Haryana At Chandigarh

Case No: RSA No. 2508 of 1997 (O&M)

Bhaira Ram through L.Rs. and
Others

APPELLANT

Vs

Sajjna Devi and Others

RESPONDENT

Date of Decision: May 28, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6, 35-A
- Evidence Act, 1872 - Section 44
- Registration Act, 1908 - Section 17, 17(1), 17(1)(a), 17(1)(b), 17(2)

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Advocate: Kamalpreet Kaur, Advocate for the Appellant; L.N. Verma, Advocate and Mr. Ashok Verma, Advocate for Respondents Nos. 2 and 3, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for declaration challenging the judgment and decree dated 18.03.1992 as not binding upon the rights of the plaintiff on the ground that it is actuated by fraud and misrepresentation, was dismissed.

2. The plaintiff and defendant No. 1 are the son and daughter of one Puran Ram. The defendants No. 2 and 3 are sons of Jetha Ram, another son of Puran Ram. The assertion of the plaintiff-appellant is that respondent No. 1 is owner of 1/24th share of land measuring 650 Kanals 19 Marlas situated in village Barwala, Tehsil Dabwali, District Sirsa and 1/24th share of land measuring 113 Kanals 18 Marlas situated in village Risalia Khera, Tehsil Dabwali, District Sirsa. The plaintiff invoked the jurisdiction of the Civil Court with the averment that suit property was a Joint Hindu Family property and in a family settlement the suit land has fallen to the share of the

plaintiff whereas defendants No. 2 and 3 played fraud over defendant No. 1 and obtained impugned decree on 18.03.1992 in a suit filed by defendants No. 2 and 3. In the suit, the stand of defendant No. 1 in her written statement is that decree has been obtained by fraud and that share of defendant No. 1 was to be divided amongst the plaintiff to the extent of half share whereas the remaining half share was to be given to defendants No. 2 and 3. It is stated that, in fact, only half share was to be given to the defendants No. 2 and 3 when she appeared in the previous suit whereas the decree passed in respect of her entire share in favour of defendants No. 2 and 3 is not the correct decree. In the said suit, the following issues were framed:-

1. Whether the judgment and decree dated 18.03.1992 passed in Civil Suit titled as Bhuru Ram versus Sajjna Devi are illegal, null and void and not binding on the interest of the plaintiff and accordingly liable to be set aside on the grounds alleged? OPP.
2. Whether the plaintiff is owner in possession of the suit land as per shares given in the head of plaint? OPP.
3. Whether the plaintiff has no locus-standi and cause of action to file the present suit? OPD.
4. Whether the suit is not maintainable in the present suit? OPD.
5. Whether the suit is time barred? OPD.
6. Whether the defendants are entitled to special costs u/s 35-A CPC? OPD.
7. Relief.

3. In the said suit, the plaintiff appeared as his own witness as PW-1 and also examined Mani Ram as PW-2. Plaintiff also produced the decree (Ex. P1), judgment (Ex. P2) apart from the Jamabandi for the year 1986-87 (Ex. P3) and the mutation (Ex. P4). The plaintiff also produced decree (Ex. P5) in a suit Mani Ram Vs. Khaili Ram in rebuttal. On the other hand, defendant No. 1 appeared as his own witness as DW-1 and also examined Mahavir as DW-2. Defendants No. 2 and 3 examined Om Parkash as DW-3, Kulvir Singh Passi, Advocate as DW-4, Lal Chand as DW-5 and produced copy of the plaint (Ex. D1), written statement (Ex. D2) in the earlier suit titled as Bhaira Ram Vs. Sajjna Devi. After considering the evidence, learned trial Court dismissed the suit relying upon Division Bench judgment of this Court in [Gurdev Kaur and Another Vs. Mehar Singh and Others](#), . The appeal against the said judgment was dismissed wherein the reliance was placed upon another judgment in Parvin Kumar and others Vs. State of Haryana, 1991 PLJ 95.

4. In the present second appeal, the plaintiff-appellant claimed the following substantial question of law:-

Whether the consent decree dated 18.03.1992 passed in civil suit titled Bhura Ram Vs. Sajjna Devi is illegal and void and not binding on the plaintiff and liable to be set aside?

5. Learned counsel for the appellant relies upon judgment of Hon"ble Supreme Court in [Bhoop Singh Vs. Ram Singh Major and others](#), wherein the Division Bench judgment in Gurdev Kaur's case (supra) was found to be not correctly decided. It was held therein that the decree or order of the Court which declares the pre-existing right and which does not by itself create new right, title or interest in praesenti in immovable property alone would not require registration. The relevant extract from the judgment reads as under:-

16. We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs. 100 or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.

17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs. 100 or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable.

18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised as below:

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs. 100 or upwards in favour of any party to the suit, the decree or order would require registration.

(3) If the decree were not to attract any of the clauses of sub-section (1) of section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the "subject matter of the suit or proceeding", clause (vi) of subsection (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated.

6. Mr. Verma, learned counsel for the respondent relies upon the judgments in Gurdev Kaur's case (supra); Parvin Kumar's case (supra) and [Bachan Singh Vs. Kartar Singh and Others](#), . It is argued that in fact the decree is not the decree passed on compromise but based on admission falling within Order 12 Rule 6 of the Code of Civil Procedure, therefore, such decree cannot be said to be invalid for any reason. It is also argued that defendant No. 1 has been identified by Mahavir (DW-2) in Court. The Advocate who drafted the admission written statement on the instructions of Sajna Devi namely Kulvir Singh Passi has been examined as DW-4. Therefore, there is no proof of fraud. It is also argued that plea of fraud could be raised by Sajna Devi not in defence but by filing a suit alleging specific fraud having been committed.

7. In Gurdev Kaur's case (supra), a Division Bench of this Court has held that if a title is created by consent decree which forms subject matter of dispute in the suit, such a consent decree is saved from registration. The view taken in the aforesaid judgment has not been approved by the Hon"ble Supreme Court in Bhoop Singh's case (supra) as reproduced above.

8. In Bachan Singh's case (supra), the defendant admitted the claim of the plaintiff in the earlier suit which led to decree on 13.11.1981. The Court observed that the consent decree passed by the Court is not required to be registered under the provisions of the Indian Registration Act, 1908 (for short "the Act") and the finding of the first Appellate Court that decree was a sale to overcome the provisions of the Act is not correct. In the said order, the judgment in Bhoop Singh's case (supra) was not brought to the notice of the Bench.

9. The view taken in Bhoop Singh's case (supra) was considered by later judgment in [Som Dev and Others Vs. Rati Ram and Another](#), , considering provisions of the Indian Registration Act, 1908, the Court held to the following effect:-

12.Suffice it to say that on a plain reading of clause (vi) of Section 17(2) all decrees and orders of the court including a compromise decree subject to the exception as regards properties that are outside the subject matter of the suit, do not require registration on the ground that they are hit by Section 17(1)(b) and (c) of the Act. But at the same time, there is no exemption or exclusion, in respect of the clauses (a), (d) and (e) of Section 17(1) so that if a decree brings about a gift of immovable property, or lease of immovable property from year to year or for a term exceeding one year or reserving an early rent or a transfer of a decree or order of a Court or any award creating, declaring, assigning, limiting or extinguishing rights to

and in immovable property, that requires to be registered.

18. Therefore, it was a case of the right being created by the decree for the first time unlike in the present case. In para 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 plain 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.....

10. Considering the above case, it was found that in Bhoop Singh's case (supra), the decree created title for the first time on admission, therefore, it was a case coming u/s 17(1)(a) of the Act.

11. In [K. Raghunandan and Others Vs. Ali Hussain Sabir and Others,](#) , again the Court held to the following effect:-

38. A statute must be construed having regard to the purpose and object thereof. Sub-section (1) of Section 17 of the Act makes registration of the documents compulsory. Sub-section (2) of Section 17 of the Act excludes only the applications of clauses (b) and (c) and not clause (e) of sub-section (1) of Section 17. If a right is created by a compromise decree or is extinguished, it must compulsorily be registered if the compromise decree comprises immovable property which was not the subject-matter of the suit or proceeding. Clause (vi) is an exception to the exception. If the latter part of clause (vi) of sub-section (2) of Section 17 of the Act applies, the first part thereof shall not apply. As in this case not only there exists a dispute with regard to the title of the parties over the passage and the passage, itself, having not found the part of the compromise, we do not find any infirmity in the impugned judgment.

12. The defendants No. 2 and 3 are the sons of her brother. Thereafter, in the present suit, the stand of defendant No. 1 Sajna Devi is that she intended to give half share to the plaintiff who is her brother and another half share to defendants No. 2 and 3 who are sons of her brother. The decree, subject matter of challenge, was passed on 18.03.1992 and soon thereafter the present suit was filed where the

defendant No. 1 Sajna Devi filed her written statement on 19.08.1992, wherein she admitted that she came to Court to give statement in favour of defendants No. 2 and 3. She confessed her reservation that she intended to give only half share to defendants No. 2 and 3.

13. I have heard learned counsel for the parties at length and find that the stand of defendant No. 1 that she intended to give her half share to defendants No. 2 and 3 and another half to the plaintiff-appellant is an afterthought. A perusal of the record shows that Ex. P5 is the decree passed in the suit amongst relations of the plaintiff. Sajna Devi, the defendant, is not party to the said suit. Thereafter, another suit was filed by defendants No. 2 and 3 in which Sajna Devi filed admission written statement. The factum of admission of the written statement stands proved on the testimony of DW-2, member Panchayat and DW-4 Kulvir Singh Passi, the Advocate, who had drafted the written statement. As a matter of fact, the defendant No. 1 herself is not disputing her presence and the fact that she wanted the consent decree. The reservation is in respect of her share given to defendants No. 2 and 3 in the earlier suit. It will not be a case of fraud that she wanted to give half share but the statement has been recorded of entire. She has not denied the filing of the written statement but asserted that only half share was intended to be given. The proceedings in Court are presumed to be correct record of the events. Strong positive evidence is required that the decree obtained suffers from fraud. Simple statement that only half share was intended to be given, instead of the entire, appears to be lame excuse. In any case, it does not meet the test of fraud.

14. Still further, if any fraud has been committed, then Sajna Devi herself should have approached the Court and that plea of fraud could not be raised by her in a suit filed by her brother. Thus the finding that Sajna Devi could not raise a plea of fraud in a suit filed by the appellant nor factually any fraud is said to be committed cannot be said to be suffering from any illegality. Both the Courts have concurrently returned a finding that there is no fraud as well. Therefore, I do not find that decree dated 18.03.1992 suffers from fraud or misrepresentation.

15. Coming to the argument that the decree is invalid for want of registration is again not tenable. The plaintiffs in the earlier suit are the nephews of defendant No. 1. Such persons are not strangers to defendant No. 1. The plaintiff filed the civil suit alleging family settlement. Such assertion is admitted by the defendant. Since the parties are closely related, there could be an oral family settlement which was accepted by the defendant in the written statement. In view of the said fact, in terms of the judgment in Bhoop Singh's case (supra) and in Som Dev's case (supra), the decree would not require registration as it was not creation of the rights in the plaintiffs in the earlier suit for the first time. They had a pre-existing right being family members of defendant No. 1. Therefore, it is held that such consent decree cannot be said to be illegal and void.

16. Consequently, the present Regular Second Appeal is dismissed as the substantial question of law raised by the appellant does not arise for consideration.