

**(2014) 03 P&H CK 0231**

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

**Case No:** R.S.A. No. 3635 of 1986

Pritam Singh

APPELLANT

Vs

Bohti

RESPONDENT

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**Date of Decision:** March 26, 2014

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 33
- Registration Act, 1908 - Section 17, 17(2)(vi)

**Citation:** (2014) 4 RCR(Civil) 382

**Hon'ble Judges:** Rakesh Garg, J

**Bench:** Single Bench

**Advocate:** R.K. Chhibbar, Senior Advocate and Lalit Thakur, Advocate for the Appellant;  
Amit Jain, Advocate for the Respondent

**Final Decision:** Allowed

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**Judgement**

Rakesh Garg, J.

This is defendants' second appeal challenging the judgment and decree of the lower appellate Court whereby the appeal filed on behalf of the plaintiff-respondent, against dismissal of her suit by the trial Court, was accepted and suit for declaration and consequential relief of possession was decreed. According to the averments made in the suit, one Ram Rikh was owner in possession of the land measuring 523 Kanals 14 Marias, as detailed in the plaint. After his death, the land in dispute was inherited by his legal heirs and the plaintiff-respondent became owner of the land owned by him, to the extent of 1/8th share. She got the same cultivated through Mani Ram, who used to cultivate the land of her share, on her behalf, and used to pay rent thereof by way of sharing the food grains. She had full confidence in said Mani Ram because of her close relationship with him. As per further averments, the plaintiff-respondent was brought to Kaithal by defendant No. 1 Mani Ram on the pretext that, her share is being separated so that no dispute is raised later-on and her thumb impressions were obtained giving an impression that the same were

being taken for the purpose of partition of her share. However later-on, at the time of harvesting the Kharif crop in the year 1980, when she went to the village of Mani Ram, he refused to pay the rent and stated that she was no more owner of the land in dispute and then she came to know that false and frivolous decree has been obtained by the defendants by committing a fraud upon her. She came to know that the papers, on which she had put her thumb impressions, were the written statement in Civil Suit No. 703 of 1974. No summons were issued to her and the copy of the plaint was never read over to her and even she never engaged any counsel in the Civil Suit. Thus, according to the plaintiff-respondent her thumb impressions were obtained by fraud and misrepresentation, as she remained under the impression that her share was being separated. It was further alleged, that in spite of the repeated requests, the defendants refused to hand over possession of the land in dispute to her and to accept her title over the land in dispute. Thus, necessity arose to file the instant suit.

2. A joint written statement was filed on behalf of defendants No. 1 to 4. It was admitted that Ram Rikh was owner of the land in dispute and after his death, the plaintiff-respondent became owner of the land owned by him to the extent of 1/8th share being his daughter. However, the defendants stated that above said Ram Rikh was not in possession of the land in dispute. They denied the fact that the plaintiff used to collect rent regarding the land in dispute from Mani Ram or he used to cultivate the share of plaintiff as a lessee. It was further alleged that the details regarding para No. 5 of the plaint were vague and wrong. The plaintiff had put her thumb impressions on the written statement and the statement was made in the Court knowing fully well the contents of the plaint and no misrepresentation was made to her. The plaintiff had put her thumb impressions after fully understanding the contents of the plaint. Summons were not issued because the plaintiff was herself present in Court on the date of filing of the suit. In these circumstances, according to the defendants, the decree passed in Civil Suit No. 703 of 1974 was absolutely correct and in accordance with law and binding upon the plaintiff. It was stated that the plaintiff was aware of the decree from the date it was passed and in these circumstances, dismissal of the suit was prayed for.

3. On the basis of pleadings of the parties, following issues were framed by the trial Court:

1. Whether the suit land was owned by father of the plaintiff and the plaintiff inherited 1/8th share on his death? OPP

2. Whether the defendants obtained decree in Civil Suit No. 703 of 1974 by playing fraud on her? If so to what effect? OPP

3. Relief.

4. After taking evidence from both the sides, the trial Court observed that the decree was obtained with the consent of the plaintiff-respondent and therefore, it decided

issue No. 1 in favour of the plaintiff-respondent and issue No. 2 against her and dismissed the suit vide its judgment and decree dated 29.09.1983.

5. Aggrieved from the aforesaid judgment and decree of the trial Court, the plaintiff-respondent filed an appeal before the first appellate Court. The lower appellate Court, vide its judgment and decree dated 07.10.1986, accepted the appeal and decreed the suit. The relevant paragraphs of the aforesaid judgment read thus:

"10. Regarding issue No. 2 it may be stated that the appellant made a statement copy of which is Ex. D1 before the Court of Shri S.D. Arora, the then Sub Judge 2nd Class, Kaithal and she stated that she agreed that a decree may be passed in favour of the respondents. The appellant also made a statement copy of which is Ex. P11 before the Assistant Collector that she did not object if her share was transferred to the respondents PW2 Smt. Bohti has been examined on oath and she has admitted that she and her husband has grown up children including the sons with her. She however stated that she was defrauded by the respondents but a mere averment or deposition as such in the Court does not become conclusive of its own. On the other hand Shri K.K. Adlakha Advocate DW1 has stated that the written statement filed in the previous suit was signed by his cousin brother who too is with the name of Shri K.K. Adlakha. This witness has not been cross examined at all. DW2 Shri Yashpal Chand Jain Handwriting and Finger Print Expert has also examined the disputed thumb impression with the specimen thumb impression and furnished his report Ex. DW2/2 and stated that the thumb impressions on the power of attorney, written statement and the statement recorded in Court belong to Bohti. DW3 Shri K.K. Adlakha Advocate also appeared himself and he also stated that Bohti had come to him as client and he conducted her case. In fact not much of the discussion is required on the point as there is overwhelming evidence led by the respondent that the aforesaid judgment and decree on the basis of the consent of the parties was passed by the Court and there was no question of fraud or misrepresentation absolutely. Therefore, I overrule the contention of the learned counsel for the appellant, as they are totally unfounded and rather preposterous.

11. However, the other point taken by him is that since the consent decree as such is a mere decree on the basis of a collusive suit filed between the parties to obtain a desired result, it actually did not transfer any rights and the decree was hit by Section 17 of the Registration Act. He has cited a case namely [Nechhittar Singh Vs. Jagir Kaur and Others](#), This authority lays down that in such like cases the property of a value of more than Rs. 100/- cannot be transferred without a registration deed. The contention of the learned counsel for the respondent has been that in fact there has been a compromise between the parties and the decree has been passed on the basis of the compromise. No written compromise has either been proved or placed on record nor any such compromise arrived at between the parties outside the Court nor such a compromise was placed before the Court which led to the passing

of the impugned decree nor such a compromise found part of the decree sheet. Therefore, the authority of Hon"ble the High Court which is the latest one on the point is binding on this Court and such a point being a legal point which goes to the root of the case can be taken up and decided at any stage of the proceedings. Hence, the finding of issue No. 2 arrived at by the learned trial Court cannot be sustained and is, therefore, reversed.

12. Nothing is urged as regard the finding of issue No. 1 and therefore, the finding as such is affirmed."

6. Feeling aggrieved from the aforesaid judgment and decree of the lower appellate Court, the defendants have filed the instant appeal. The following substantial questions of law have been framed on behalf of the appellants, which are said to be arising out of this appeal for consideration of the Court:

1. Whether the consent decree Exhibit P-3 dated 16.11.1974, transferring the share of sister Bohti, in favour of her brother and sons and grandson of the brother is liable to be compulsorily registerable under the Registration Act, 1908 (16 of 1908), before it could pass any valid title?

2. Whether the judgment in [Nechhittar Singh Vs. Jagir Kaur and Others](#), is applicable to this case, if not, whether the Ld. Lower Appellate Court has erred in relying on the same and by accepting the appeal of the Plaintiff/Respondent Bohti by relying on the said judgment?

3. Whether the Ld. Lower Appellate Court erred in not relying on Section 17(2)(vi) of the Registration Act, 1908, which is applicable to the facts of the present case?

4. Whether the Ld. Lower Appellate Court should have followed the judgment of this Hon"ble Court in [Khushal Singh Vs. Devinder Nath and Others](#),

7. In support of their case, counsel for the appellants has vehemently argued that after holding that there was no question of fraud or misrepresentation by the defendants while obtaining decree, the lower appellate Court has erred at law while decreeing the suit of the plaintiff-respondent on the ground that the decree in question dated 16.11.1974 passed in Civil Suit No. 703 of 1974 did not transfer any rights in favour of the appellants and the said decree was hit by Section 17 of the Registration Act. According to counsel for the appellants, there had been a compromise between the parties and the decree dated 16.11.1974 was passed on the basis of said compromise which was duly noticed in the decree and was also mentioned in para No. 4 of the plaint (Ex. P2), wherein it was specifically averred that there was a family partition dated 24.04.1968 between the parties with regard to the suit land and the plaintiffs have become owners of the suit land on the basis of said family partition and it was only wrong entries in the revenue record which were continuing in the name of defendants. The aforesaid averments made on behalf of the plaintiffs in Civil Suit No. 703 of 1974 (appellants herein) were duly accepted by

the plaintiff-respondent by filing written statement admitting claim of the appellants. Not only this, the plaintiff-respondent also appeared in the Court on 08.11.1974 and recorded her statement Ex. D1 stating that the suit filed by the appellants, i.e. Civil Suit No. 703 of 1974, is correct. She had signed the written statement after hearing and understanding the same. According to counsel for the appellants, the aforesaid averments clearly demonstrate that the decree in question did not require registration under the provisions of the Registration Act, being based on a family compromise/memorandum/arrangement. According to counsel for the appellants, findings of the lower appellate Court in para No. 11 of the impugned judgment to the effect that neither there was any compromise placed on record before the Court, which led to passing of the impugned decree, nor such a compromise found part of the decree-sheet; is the result of misreading of documents placed on record. According to him the impugned judgment, which is on record as Ex. P3, also mentions about the admission made by the plaintiff-respondent in the written statement and her statement on oath; and thus, the findings of the lower appellate Court in this regard were the result of perversity and are liable to be set aside.

8. However, counsel for the respondent has vehemently argued that the plaintiff-respondent is not challenging the decree in question on the ground that the same is not based on compromise/family partition, but the challenge has been laid on the ground that there was no pre-existing right between the parties and therefore, the decree in question which had created rights in favour of the plaintiff-respondent for the first time with regard to the suit land, required registration. According to counsel for the respondent, the decree even if based on a compromise but creating a right in the immovable property worth more than Rs. 100 for the first time in the other party, requires registration. Counsel for the respondent has relied upon a judgment of Hon"ble the Supreme Court in [Bhoop Singh Vs. Ram Singh Major and others](#), According to learned counsel for the respondent, the decree in question has been passed in view of the written statement filed by the defendants, admitting claim of the plaintiff to be correct and such a decree is not a compromise decree, but a judgment on admission. Such a decree is creating rights for the first time and thus, it would require registration.

9. In fact there is no dispute with the proposition of law, as settled by Hon"ble the Supreme Court on the point in issue. However, in the instant case, it cannot be argued that there was no pre-existing right in favour of the appellants qua the suit land. It may be noticed that in para No. 4 of the plaint, the appellants specifically pleaded a family partition between the parties on 24.04.1968 according to which they became the owners of the suit property; whereas the revenue entries continued in the name of plaintiff-respondent with regard to the title of the suit land. The said averment made in the plaint filed on behalf of the appellants was admitted by the plaintiff-respondent accepting the fact that rights of the parties had been crystallized between them on the basis of that family partition on 24.04.1968

and by filing a suit, on the basis of which impugned decree was passed, and family partition was given a legal shape. Thus, a pre-existing right on the basis of family partition was already there, which was recognized by passing the impugned decree, and therefore, the argument raised on behalf of the plaintiff-respondent is not available to her.

10. Faced with this, learned counsel for the respondent has further argued that the suit was filed on 08.11.1974 and admittedly no summons were served upon the plaintiff-respondent in the earlier suit. But strangely enough, she appeared on the very first day of filing of the suit itself and recorded her statement and even the decree was passed on 16.11.1974, and thus, the haste in which the decree was passed in favour of the appellants itself suggests the fraud. Learned counsel for the respondent has relied upon a judgment of Hon'ble the Supreme Court in [Santosh Vs. Jagat Ram and Another](#), to contend that such circumstance itself proves fraudulent nature of the decree and such a decree is a nullity. Counsel for the respondent has referred to the provisions of Order XLI Rule 33 C.P.C. to contend that a party which has fully succeeded in the suit need not prefer an appeal or file any cross objection, though certain findings may be against that party, and such a winning party has a right to defend the judgment passed in its favour raising such an argument against such findings. There is no dispute with the proposition of law to the effect that mere findings against a winning party can be questioned and modified in the appeal of other party, even without any cross objection or cross appeal.

11. Again the argument raised is not available to the plaintiff respondent as the lower appellate Court, on appreciation of evidence, has recorded a finding to the effect that no fraud was committed upon the plaintiff-respondent while passing the decree in question and the plaintiff-respondent herself appeared in that suit and got recorded her statement and also filed her written statement admitting claim of the appellants. Moreover, there is nothing on record to suggest that such a finding was incorrect. In the case of "Santosh v. Jagat Ram and another" (supra), there was enough material to prove fraud and the same was overlooked by the lower appellate Court.

12. However, the findings of the lower appellate Court on the question of fraud cannot be reversed on the basis of argument raised, especially in view of the fact that there is no material on record to challenge the findings of the lower appellate Court that no fraud was committed upon the plaintiff-respondent while passing the impugned decree. Thus, the substantial questions of law, as raised in this appeal, are answered in favour of the defendant-appellants and against the plaintiff-respondent. Consequently, the appeal is allowed and the impugned judgment and decree of the lower appellate Court is set aside resulting into dismissal of the suit.