

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No.1364 of 1985 (O&M)

Date of decision: 26.08.2015

Risala (died) through LRs and another

..... Appellants

versus

Ruldu and others

..... Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.V.K.Jain, Senior Advocate with
Mr.Sidarath Jain, Advocate for the appellants
Mr.Vishnu Dutt Sharma, Advocate for the respondents

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?* **Yes**
2. *To be referred to the Reporters or not ?* **Yes**
3. *Whether the judgment should be reported in the Digest?* **Yes**

Kuldip Singh, J.

Defendant Nos.1 and 2 before the lower Court has filed this regular second appeal challenging the judgment and decree dated 14.1.1985, passed by the learned Additional District Judge, Jind, vide which, the judgment and decree dated 16.1.1984, passed by the learned Sub Judge, IInd Class, Jind was set aside and the suit of the plaintiff was decreed for declaration to the effect that she is owner of 1/9th share in the total land measuring 347 kanals 11 marlas and that the judgment and decree dated 25.2.1981 passed by Senior Sub Judge, Jind in Csuit No.120 of 24.2.1981 is null and void and based on fraud and not binding upon the rights of the plaintiff. A decree for possession was also passed in favour of the plaintiff and against the defendants.

Facts of the case are that Sunehri plaintiff filed a suit for declaration to the effect that she is owner in possession of 1/9th share in the agricultural land measuring 347 kanals 11 marlas, fully detailed in the head note of the plaint, situated in village Jhanjh Kalan, Tehsil and District Jind and that the judgment and decree dated 25.2.1981, passed in Civil Suit No.120 of 24.2.1981, passed by the Senior Sub Judge, Jind is null and void, based on the fraud and not binding upon the rights of the plaintiff. Permanent injunction was also sought for restraining the defendants from alienating the suit land in any manner. It was also prayed that if it is found that defendant set No.1 is in unauthorized possession, then decree for possession may also be granted. Plaintiff claimed that she is owner in possession of 1/9th share in the suit property. Defendant Nos.1 and 2, who are relative of the plaintiff being cousin, approached the plaintiff for giving share of the plaintiff on lease basis for two years. Plaintiff agreed to the same and came to Jind about one year back for execution of necessary documents. Defendant Nos.1 and 2 got thumb impression of the plaintiff and defendant set No.II on two or three documents in the presence of Ch.Dhup Singh, Advocate Jind. Defendant set No.II also told that she has also come at Jind for leasing out the land of her share to defendant set No.II. Defendant set No.II also executed few documents in this connection. Then defendant set no.1 took the plaintiff to the office stating that documents are to be got registered to avoid further complication and for that purpose plaintiff and defendant set No.II have to appear before the officer concerned. The thumb impression of plaintiff and defendant set No.II were also

obtained on a paper in the alleged office of the Registrar. Regarding payment of lease money, defendant set No.1 stated that they will pay the lease money after harvesting the crop. Lease amount was settled at Rs.300/- per killa per annum. About a month back, plaintiff came to the house of her mother and there she came to know that defendant set No.1 has become owner of the suit land by way of collusive decree obtained through said fraud. Plaintiff never signed the written statement and power of attorney nor admitted the suit of the plaintiff to be correct in the said suit No.120 of 24.2.1981. Decree was obtained by fraud and misrepresentation of facts.

It is necessary to mention here that defendant Risala and Hazur Singh was mentioned as defendant set No.1 and Smt.Shanti was mentioned as defendant set No.II.

Defendant No.2 appeared and in the written statement admitted that a family settlement was effected in which Rs.50,000/- were given in the shape of cash, jewellery and clothes to her and her sister Sunheri plaintiff and that as per the family settlement, she had made a statement before the Court. Defendant Nos.1 and 2 in the joint written statement raised preliminary objection that a mutual family settlement was arranged between plaintiff and defendant set No.1 and defendant set No.II by the efforts of the neighbourhood, relations and the Panchayat. According to that settlement, plaintiff and defendant set No.II were given clothes, ornaments, cash and other articles of about Rs.50,000/-. In the token of receipt of the said clothes, ornaments and cash etc. writing was also executed, which was thumb marked by the plaintiff and others. On merits, all the

averments were denied stating that plaintiff had made the statement before the Court of Senior Sub Judge, Jind and decree was correctly passed. In replication, plaintiff denied the averments made in the written statement. Parties went on trial on the following issues:-

- 1. Whether the plaintiff is owner in possession of 1/9th share of suit land? OPP*
- 2. If the plaintiff is not in possession of the suit land, whether she is entitled to get the possession from the defendants? OPP*
- 3. Whether the impugned decree dated 25.2.1981 passed in Civil Suit No.(120 of 1981) is null and void, illegal and based on fraud as alleged in para No.7 of the plaint? OPP*
- 4. Whether the plaintiff has no locus standi to file the suit? OPD (set No.1)*
- 5. Whether the suit is not properly valued for purpose of court fee and jurisdiction? OPD*
- 6. Whether the suit is not maintainable in the present form, as the suit merely for declaration does not lie? OPD*
- 7. Whether the plaintiff has no cause of action as alleged in written statement of defendant set No.1? OPD*
- 8. Relief.*

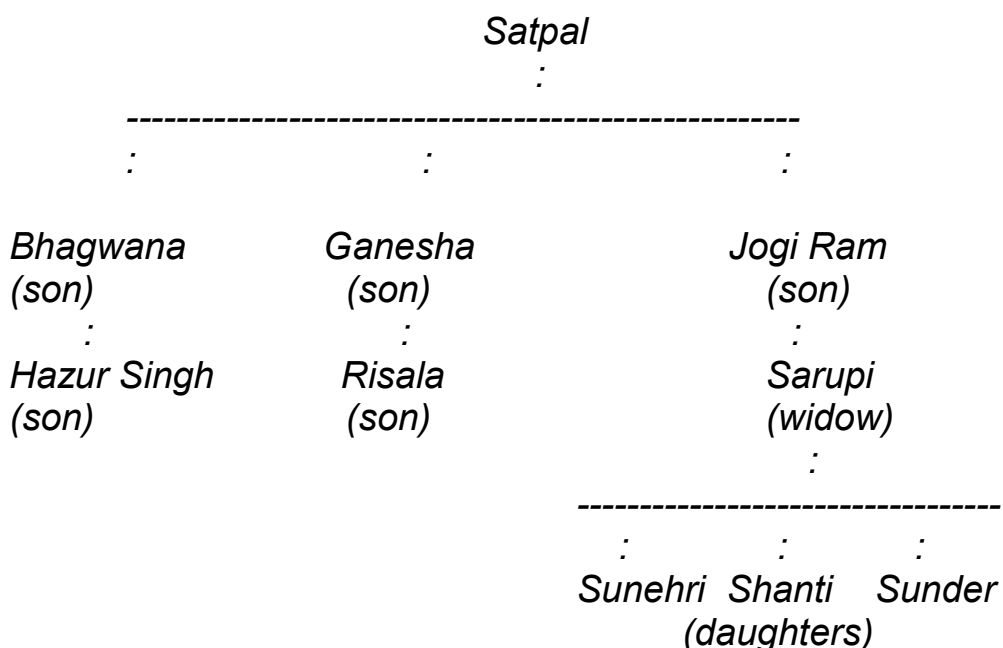
The lower Court held that plaintiff and defendant set No.II had appeared before the lower Court and had made the statement. No fraud was committed and consequently, judgment and decree were correctly passed. Accordingly, the suit was dismissed with no order as to costs. The judgment was reversed in appeal.

I have heard learned counsel for the parties and have carefully gone through the file.

After hearing the learned counsel for the parties, the following substantial questions of law arise for consideration in the present appeal :-

1. Whether the consent decree is to be set aside in toto or in parts ?
2. Whether the consent decree needs compulsory registration under the Registration Act ? If not registered, the effect thereof ?
3. Whether in replication the simple denial of the facts contained in the written statement are deemed to be admission of the facts, mentioned in the written statement ?

The relationship between the parties is depicted from the following pedigree table:-



Plaintiff claimed that a fraud was committed upon her and in the pretext of lease deed, the consent decree was obtained. The lower Court, after taking into consideration the statement made by

the plaintiff before the lower Court and the statement of Shanti defendant No.3, has come to the conclusion that they had made the statement voluntarily and no fraud was committed. Fraud is to be inferred from the circumstances.

I am of the view that there are two aspects of fraud in this case, one is the fraud with the present plaintiff and the other is the fraud with the Court and the law. The admitted facts of the case are that Risala and Hazur Singh are the cousin brothers of Smt.Sunehri and Shanti daughters of Smt.Sarupi. Copies of the plaint Ex.PW6 filed by Risala and Hazur Singh show that on 29.7.1980, they had filed a suit against Smt.Sunehri as well as Smt.Shanti and Smt.Sunder along with others for restraining them from alienating specific khasra numbers without getting it partitioned. The suit was being contested by the present plaintiff and was ultimately withdrawn on 16.3.1981. It means that from 29.7.1980 till 16.3.1981, a litigation was pending between the parties regarding the disputed property.

Now the defendant set No.I claimed that there was a family settlement and on the basis of the same, the plaintiff and her sister Shanti had suffered a statement before the learned Civil Judge Senior Division and consequently, a consent decree was passed. The suit was filed on 24.2.1981 (i.e. during the pendency of the previous suit) and was decreed on the next day i.e. on 25.2.1981. Sunehri and Shanti are stated to have made statement on 24.2.1981 itself, admitting the claim of the plaintiff. Copy of the plaint is Ex.PW6/3 and the copy of the joint statement made by the defendants Sunehri and Shanti is also on the file. Copy of the written

statement admitting the claim is also on the file showing that it was filed on 24.2.1981 itself. It goes to show that the case was instituted and on the same day without notice, the defendants appeared, filed written statement and admitted the claim and the suit was decreed on the next day. It shows the supersonic speed in which the suit was decided.

Now this Court is to see that whether there was a genuine family settlement between the parties or some fraud was committed either upon the present plaintiff or upon the Court and the law. The defendants claimed that plaintiff Suneheri had received Rs.25,000/- in the shape of cash, jewellery and clothes and she had also executed a receipt dated 22.1.1981. The said receipt is Ex.D3. The English translation of the same is reproduced as under:-

Receipt

I Suneheri, daughter of Sarupi, am resident of Jhanjh Kalan, now wife of Ram Singh, resident of Khorl Lamba, Tehsil Narwana, District Jind. I was owner to the extent of 1/9th share of land falling in khewat No.39, Khatoni No.51, 51/1, 51/2, 52 measuring 347 kanals 11 marlas as per jamabandi 1975-76 situated in the area of Jhanjh Kalan, Tehsil and District Jind. In terms of a family settlement, I have given with my consent, volition and sweet will my 1/9th share in the disputed land to Risala, son of Ganesha and to Hazura, son of Bhagwana, resident of Jhanjh Kalan and in lieu thereof have received from them Rs.25000/- (Twenty-five thousand), Rs.10000/- in cash and jewellery and other articles amounting to Rs.15000/-. The entire amount in this manner has been obtained. This receipt of payment of Rs.25000/- has, therefore, been got signed so as to be known to all and can be used as and when required. Dated: 22-1-1981

*Sd/- R.T.I. Suneheri,
Daughter of Sarupi,
Resident of Jhanjh Kalan,
now wife of Ram Singh,
resident of Lamba Khorl
Tehsil Narwana*

RTI on revenue stamp Sunheri

*LTI Mian Singh s/o Bisna
Village Rasola Tehsil Kaithal
Sd/-Sant Singh s/o Ram Kishan
village
LTI Solu s/o Karam Chand
Village Sudkan Kalan, Tehsil Narwana*

The receipt bears the thumb impression of the Sunehri on the revenue stamp. It was also witnessed by one Miha Singh and Sant Singh. The equivalent cash and jewellery etc. was also given to the second sister Shanti. The examination of the receipt shows that in lieu of 1/9th share of Sunehri consideration of the value of Rs.25,000/- in the shape of Rs.10,000/- in cash and Rs.15,000/- as jewellery and other articles were given and Sunehri accepted payment Rs.25,000/- and issued the receipt in lieu of her 1/9th share in the disputed property. The examination of the receipt shows that infact receipt indicates that it was not a family settlement but it was sale of 1/9th share of Sunehri for cash and jewellery etc. of the value of Rs.25,000/-. Therefore, it shows that averments made in the collusive suit dated 24.2.1981 that there was a family settlement are apparently false. In fact, the receipt Ex.D3 shows that Sunehri had sold her 1/9th share in the suit land for Rs.25,000/- and received consideration. Therefore, it was out and out sale and not a family settlement. This is keeping in view the background that at that time, litigation was pending between the parties regarding the disputed property. Therefore, the averments made in the plaint that there was a family settlement between the parties are apparently false and fraudulent. The suit was apparently filed to avoid execution of sale deed and defeat the provisions of Stamp Act and Registration Act so

as to avoid payment of stamp duty on the sale deed and the registration of the documents and the payment of registration fee. In this way, the parties at the first instance had colluded to defraud the Court as well as the law of the land whereby the sale was given the shape of family settlement and a consent decree was obtained within a span of two days. The learned first appellate Court has discussed even regarding the jewellery and other articles to hold that even the said consideration is doubtful.

Therefore, from the foregoing discussions, this Court is to conclude that though no fraud was committed with the Sunehri plaintiff, yet a fraud was committed with the Court and law of the land to obtain a consent decree regarding sale of 1/9th share of Sunehri by fraudulently showing it to be a family settlement. The result is that the said judgment and decree was rightly set aside by the first appellate Court. Therefore, it is held that when a sale of immovable property is sought to be given shape of family settlement to avoid stamp duty and registration to commit fraud with Court and the law, such consent decree is to be set aside in toto.

Learned counsel for the appellant has vehemently argued that it was not a sale but only some gifts were given. I am of the view that the defendants –appellants cannot go beyond the contents of the receipt Ex.D3 produced by them in evidence which shows that the consideration of the value of Rs.25,000/- was paid in the shape of cash and jewellery, as discussed above.

Learned counsel for the appellant has further argued that the decree did not require compulsory registration as held by the first

appellate Court. For this purpose, reliance has been placed upon the authorities in Bachan Singh v. Kartar Singh and others, 2002 (1) PLJ 59, Jagdish v. Ram Karan, 2003(1) RCR (Civil) 657, Tej Singh and others v. Jagrup Singh and others, 1989 PLJ 38, Gurdev Kaur and another v. Mehar Singh and others, 1989 PLJ 182.

Admittedly, the consent decree does not require registration in ordinary cases. However, I am of the view that when the property has been sold for consideration and it is proved that it was out and out sale and thereafter a consent decree is obtained by misrepresenting the facts, and later on it is found that it was not a family settlement, but sale, then the such decree requires compulsory registration.

Learned counsel for the appellant has further argued that defendant set No.1 was member of the larger family being the first cousin. There is no dispute about the same. Learned counsel has also argued that in the replication, plaintiff had not specifically controverted the averments made in the written statement of defendant Nos.1 and 2 regarding the family settlement, as mentioned in the preliminary objection No.4, therefore, the same is deemed to be admission. The perusal of replication shows that plaintiff specifically stated that no compromise took place and a false story has been concocted. However, the written statement of defendant set No.1 shows that all the other paras of plaint were simply denied and it was simply stated that plaintiff had made the statement in the Court of Senior Sub Judge, Jind and decree dated 25.2.1981 was passed in favour of the defendants. However, the other story of the

plaintiff pleaded in the plaint that the defendant set No.I wanted to get the share of the land of plaintiff and her sister on lease and for that purpose, they were taken and the signatures were obtained on blank papers outside and before the authority representing it to be registering authority, were simply denied which is no denial in the eyes of law. Therefore, the authority in Salig Ram and another v. Shiv Shankar and others, AIR 1971 Punjab and Haryana 437, produced by learned counsel for the appellant goes against them. Therefore, it is held in the present case even in the written statement, the defendants had simply denied some of the material facts and in these circumstances, in the replication, the denial of the some simple facts mentioned in the written statement cannot be taken to be admission on the part of the plaintiff. Substantial law point raised above is accordingly decided.

In view of the foregoing discussions, the judgment and decree dated 14.1.1985, passed by the learned Additional District Judge (II), Jind is upheld with the further modification that the collusive judgment and decree dated 25.2.1981 passed in Civil Suit No.120 of 24.2.1981 passed by the Senior Sub Judge, Jind which has been challenged in the present suit which has been decreed vide judgment and decree dated 16.1.1984 by learned Sub Judge, IInd Class Jind is set aside in toto.

Appeal is accordingly dismissed with above noted modifications in the judgment.

26.08.2015

gk

(Kuldip Singh)
Judge