

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

RSA No.3839 of 1987

DATE OF DECISION: March 04, 2015.

Teja Singh

....Appellant.

VERSUS

Jarnail Kaur and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Argued by: Mr. S.K. Jain, Advocate with
Mr. Akshay Jain, Advocate
for the appellant.

Mr. Param Preet Singh Brar, Advocate
for the respondents.

SNEH PRASHAR, J.

1. This was an appeal preferred by Teja Singh son of Kaur Singh, appellant-defendant (hereinafter referred to as the “defendant”) impugning the judgment and decree dated 20.10.1987 passed by learned Additional District Judge, Bathinda, allowing the appeal with costs, preferred by Kaur Singh son of Narain Singh, respondent-plaintiff (hereinafter referred to as the “plaintiff”) against the judgment and decree dated 30.09.1985 of Sub Judge 1st Class, Mansa, vide which civil suit for declaration of plaintiff Kaur Singh was dismissed leaving the parties to bear their own costs.

2. The facts garnered from the record are as under:-

Plaintiff Kaur Singh (since deceased) was owner in possession of 1/3rd share in land measuring 319 Kanals 8 Marlas, situated in the area of village Jaurkian, (fully described in the head note of the plaint and hereinafter referred to as the “suit land”). Teja Singh-defendant was his son. The plaintiff alleged that while he was an illiterate and simpleton person, his son Teja Singh was a clever man. His son had no concern whatsoever with the suit land owned and possessed by him and he had also never delivered possession of the suit land to him.

The plaintiff further pleaded that Teja Singh filed Suit No.108 of 11.02.1982 in respect of the suit land and got a decree dated 30.04.1982 suffered in his favour fraudulently in order to cause loss to him. The said decree was challenged by the plaintiff as wrong and illegal having no effect on his rights. He alleged that he had never given the suit land to his son Teja Singh by partition, rather he himself continued to be in possession as owner.

According to the plaintiff, he had given only his 1/3rd share i.e. 1/9th share in the suit land to Teja Singh for his maintenance but by misrepresenting the facts, he got the decree dated 30.04.1982 passed in his favour and also got mutation no.4293 sanctioned in his name on the basis of the said decree. The mutation conferred no title on him and also had no effect on his rights. He requested Teja Singh to get the decree declared null and void but he did not agree.

3. The suit was contested by defendant-Teja Singh inter-alia on

the grounds that his father Kaur Singh of his own free will had filed written statement and made statement in the Court in Suit No.108 of 11.02.1982. As such, the decree dated 30.04.1982 was legally passed in his favour. He denied that he committed any fraud upon his father or that only 1/3rd share out of the 1/3rd share of his father in the suit land was to be given to him. As per his claim, his father Kaur Singh had given him his entire 1/3rd share in the suit land by way of family partition. By virtue of the same, he had become owner in possession of the suit land and his father was left with no concern whatsoever with the same and was estopped from filing the present suit. A plea that the suit was barred under Order 23 Rule 3-A of the Code of Civil Procedure (for short "C.P.C.") was also raised besides alleging that the suit was not properly valued for the purposes of court fee and jurisdiction.

4. Plaintiff filed replication controverting the objections raised by the defendants and reasserted his claim. On the rival contentions of the parties, following issues were framed:-

- (1) Whether the decree dated 30.4.82 is the result of fraud misrepresentation practised upon the plaintiff on the grounds mentioned in the plaint? OPP.
- (2) Whether the plaintiff has no locus-standi to file the present suit? OPD.
- (3) Whether the suit is bad under Order 23 rule 3-A CPC? OPD.
- (4) Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD.
- (5) Whether the suit is not properly valued for purposes of court fee and jurisdiction? OPD.

(6) Whether the defendant is entitled to special costs of the suit under Section 35-A C.P.C.? OPD.

(7) Relief.

5. Both the parties adduced evidence to substantiate their respective pleadings.

6. Considering the evidence adduced by the parties, the submissions made on their behalf and analyzing the issues on merits, learned trial Court held that the collusive decree dated 30.04.1982 suffered by plaintiff Kaur Singh was not a result of fraud or misrepresentation. The suit was held to be barred under Order 23 Rule 3-A of C.P.C. and Issues No.1 to 4 were decided against the plaintiff. The remaining issues were resolved in favour of the plaintiff and the suit was dismissed leaving the parties to bear their own costs.

7. Feeling aggrieved by the judgment and decree dated 30.09.1985 passed by learned trial Court, the plaintiff preferred an appeal. During pendency of the appeal, plaintiff Kaur Singh died. His widow Pritam Kaur and daughters Jarnail Kaur and Bhuro were impleaded as his legal representatives.

Considering the submissions made on behalf of the parties and the evidence available on record, learned first appellate Court allowed the appeal with costs and setting aside the judgment and decree dated 30.09.1985 of learned trial court, passed a decree for declaration to the effect that the decree dated 30.04.1982 passed in Suit No.108 of 11.02.1982 does not effect the rights of Kaur Singh and he continued to be owner of 1/3rd share of the suit land. The mutation no.4293 sanctioned on the basis of

the decree was held to be null and void having no effect on the rights of Kaur Singh and his legal representatives.

8. Being unsatisfied with the judgment and decree dated 20.10.1987 passed by learned first appellate court, defendant-Teja Singh preferred the instant regular second appeal.

9. The submissions made by Mr. S.K. Jain, learned counsel representing the appellant and Mr. Param Preet Singh Brar, learned counsel representing the respondents have been considered and record has been perused.

10. Relationship of father and son between the parties was not a matter in dispute. Also admittedly Teja Singh filed civil suit No.108 dated 11.02.1982 titled 'Teja Singh vs. Kaur Singh' claiming to have become owner in possession of the entire share of his father Kaur Singh in the suit land, i.e. $1/3^{\text{rd}}$ share, on the basis of a family settlement that took place about two years prior to the institution of the suit. Plaintiff Kaur Singh admitted the claim of Teja Singh by filing a written statement and also by appearing in the court and making a statement to that effect. On the basis of his statement, judgment and decree dated 30.04.1982 Ex.P4 and Ex.P5 respectively were passed. Subsequently, Kaur Singh filed a suit for declaration alleging that his son had got the decree suffered from him by misrepresentation and fraud. He pleaded that only $1/3^{\text{rd}}$ share out of his $1/3^{\text{rd}}$ share, which comes to $1/9^{\text{th}}$ share in the suit land, had been given by him to his son Teja Singh for his maintenance. There was no settlement to give his entire share to him.

Teja Singh, on the other hand denied the allegations that his father Kaur Singh had not voluntarily filed the written statement and had also not given statement in the Court admitting his claim. He tendered in evidence certified copies of Ex.D1 and Ex.D2 of the statements dated 30.03.1982 made by Kaur Singh in the Court and the written statement dated 19.03.1982 filed by him.

11. Learned counsel for the appellant-defendant Teja Singh argued that the statement Ex.D1 and the written statement Ex.D2 of plaintiff Kaur Singh were proved by DW1 Walaiti Ram, who at the relevant time was working as Reader in the Court of Sub Judge Ist Class, Mansa and by DW2 Sham Lal, who was practicing as Lawyer at Mansa and who represented Kaur Singh and filed his Power of Attorney and written statement on behalf of Kaur Singh. Both the witnesses stated that Kaur Singh had put his thumb impressions on the written statement as well as under the statement given in the court in their presence admitting the same as correct. Learned counsel contended that both DW1 and DW2 were independent witnesses having no relationship with defendant Teja Singh and also having no reason to falsely depose against plaintiff Kaur Singh. Learned counsel also pointed out that during his statement Kaur Singh categorically admitted that he had put his thumb impression under his statement recorded in the Court. From the admission of Kaur Singh coupled with the testimony of DW1 and DW2, it stood established that Kaur Singh had voluntarily and without any pressure from any quarter filed his written statement and also given the statement in the court.

12. Learned counsel further emphatically argued that even if the judgment Ex.P4 and decree sheet Ex.P5 dated 30.04.1982 are based on the admitting statement made by Kaur Singh in the court and it could be said to be a consent decree, yet it is a valid decree as envisaged under Order 23 Rule 3 of C.P.C. There was no requirement for a separate instrument of compromise in writing. To support his arguments, learned counsel relied upon **Pushpa Devi Bhagat (D) Th. LR. Smt. Sadhna Rai vs. Rajinder Singh & Ors., 2006(3) R.C.R. (Civil) 479.**

Further, relying upon **Daljit Kaur and another vs. Muktar Steels Pvt. Ltd. and another, 2014(1) R.C.R. (Civil) 625,** learned counsel contended that no independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A of Order 23 C.P.C. A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the same. Further, it was a case where the parties had put forward in the suit a right based on an earlier transaction of relinquishment/family arrangement by which Teja Singh had title over the suit property. The decree based on admission of the party did not require registration as envisaged under Section 17(2)(vi) of the Registration Act, 1908 (in short, “the Act of 1908”). To fortify the said argument, learned counsel relied upon **Som Dev and ors. vs. Rati Ram and anr., 2006(4) R.C.R. (Civil) 303.**

13. The arguments of learned counsel for the appellant-defendant Teja Singh were refuted by learned counsel for legal representatives of

plaintiff Kaur Singh. He argued with vehemence that the decree dated 30.04.1982 was a consent/collusive decree. Teja Singh had no pre-existing right in the suit land. Since the value of the property was more than ₹100/-, it could not be transferred simply by suffering a decree which was also not got registered. Under Section 17(2)(vi) of the Act of 1908, any instrument conferring title on property of more than ₹100/- required compulsory registration. Learned counsel further argued that the decree dated 30.04.1982 was obtained by Teja Singh by fraud and misrepresentation. His father Kaur Singh deposed and his statement was corroborated by the witnesses namely Nichhatar Singh PW2, Sukhdev Singh PW3 and Dalip Singh PW4 who all unequivocally deposed that in their presence and before the Panchayat, plaintiff Kaur Singh had agreed to give 1/3rd share out of his share to his son Teja Singh. Nichhatar Singh PW2 was related to the parties being nephew of plaintiff Kaur Singh and the other two witnesses namely PW3 Sukhdev Singh and PW4 Dalip Singh were independent witnesses being co-residents of the village of the parties i.e. village Jaurkian.

Learned counsel urged that there was no reason for the witnesses to support the father or make a statement in favour of the son. More so, in his pleadings in suit no.108 dated 11.02.1982 Teja Singh claimed that the possession of the suit land had been handed over to him by his father during the family arrangement and since then i.e. for the last two years he was in possession as owner. The revenue documents tendered in evidence by the plaintiff i.e. Jamabandi for the year 1980-81 Ex.P1 and Khasra Girdawari for the period 1976 to 1983 proved that plaintiff Kaur

Singh continued to be owner in possession of the suit land. In that manner, neither any family settlement nor the impugned decree was ever acted upon by the parties.

14. Indeed, it was not denied by plaintiff Kaur Singh that he did not appear in the Court or he did not make the statement Ex.D2 admitting the claim of his son Teja Singh. However, his plea was that he had agreed to give $\frac{1}{3}$ rd share out of his $\frac{1}{3}$ rd share that comes to $\frac{1}{9}$ th share in the suit land to his son for maintenance and never intended to give his entire share in the suit land to him. The witnesses PW2 to PW4 examined by plaintiff Kaur Singh supported his version that in the presence of Panchayat he had consented to give $\frac{1}{3}$ rd share in the suit land owned by him.

15. At the time, the suit was filed and plaintiff Kaur Singh appeared and made statement in the court, there was a strong relationship of trust between the parties as they were father and son. The age of plaintiff in his statement was mentioned as 65 years. He was apparently an illiterate person who could not read or write in any language because his thumb impressions were obtained on the written statement and on the statement made in the Court. Admittedly, no written document indicating the family partition/ arrangement between the parties was prepared or produced in the Court. Such being the situation, no other evidence except his own deposition and the deposition of the persons, who constituted the Panchayat and in whose presence he agreed to give $\frac{1}{3}$ rd share out of his share in the land owned by him to his son Teja Singh, could be produced by plaintiff Kaur Singh. The said respectables of the village had no reason to favour

Kaur Singh or depose against his son Teja Singh. They were neutral persons and could be expected to have come forward to give evidence in a case of family dispute only when they intended to expose the truth. Therefore, the plea of misrepresentation and fraud raised by plaintiff Kaur Singh could not be outrightly ignored.

16. Be that as it may, the fact is that as per Jamabandi for the year 1980-81 Ex.P1 Kaur Singh was exclusive owner of the suit land. No document was produced to prove that it was ancestral/coparcenary property of the parties in which his son Teja Singh could have a right by birth. In other words, defendant Teja Singh had no concern whatsoever with the suit land. As observed above, no document was produced to prove that a family partition/settlement had taken place between the parties two years prior to filing the suit. On the contrary, the Khasra Girdawari for the period 1976-83 Ex.P3 proves that plaintiff Kaur Singh continued to be recorded owner in possession of the suit land which means that possession of the suit land had never been handed over by Kaur Singh to his son Teja Singh at any point of time as was alleged by the latter. In that manner, it is evident that prior to the institution of civil suit no.108 dated 11.02.1982 Teja Singh had no pre-existing right in the suit land. The question of family partition as alleged in the pleadings by Teja Singh also did not arise because according to Teja Singh the entire land owned by Kaur Singh had been given to him and out of the same or in lieu of the suit land nothing was given or retained by Kaur Singh.

In the above set of facts, it was the impugned decree dated

30.04.1982 that created title of Teja Singh for the first time in the suit land. Such a decree which created title for the first time in the property valuing more than ₹100/- was essentially registrable in view of section 17(2)(vi) of the Act of 1908. The facts of the instant case are distinguishable from Som Devi and other's case (supra) relied by learned counsel for appellant Teja Singh. In the instant case, as held above the impugned decree created title in Teja Singh for the first time whereas in the said case the decree was based on a proved family arrangement.

17. In Raghubir Singh vs. Sri Chand 1984 P.L.J. 562, this Court dealing with the nature of consent decrees held that the compromise decree remains essentially a contract between the parties with the seal of the Court superimposed thereon and it can be challenged on all grounds on which the contract can be vitiated. A consent decree can be challenged not only on the grounds available under the Indian Contract Act, 1872 (for short “the Act of 1872”) such as, fraud, mistake or misrepresentation but also on any of the grounds available under any other law which prohibits such a contract or declares it to be ineffective so far as transfer of any rights in immovable property are concerned. If the consent decree has the effect of transferring the land without a registered deed, which required compulsory registration, the decree will be null and void.

18. Reverting to the instant case, since the value of the suit land was more than ₹100/-, in case Kaur Singh wanted to transfer the same to his son Teja Singh, he could do so only by executing a registered deed. It was only to save registration fee etc. that he was made to suffer the decree dated

30.04.1982. Since the said decree was against public policy and against the provisions of the Act of 1908, it was, in the fact in hand, incompetent for creating a title in favour of Teja Singh or for adversely affecting the rights of Kaur Singh.

19. As far as the suit being barred under Order 23 Rule 3 of C.P.C. is concerned, the said provision was not applicable to the present case because no written compromise/family partition/family arrangement was produced by the parties before the Court. Only a written statement that too simply admitting the claim of Teja Singh was filed by Kaur Singh and thereafter an admitting statement of Kaur Singh was recorded in the Court. Here, again the facts of Pushpa Devi Bhagat (D) Th. LR. Smt. Sadhna Rai's case (supra) are distinguishable. In that case by way of a compromise the tenant had agreed to vacate the demised premises by a specified date and the decree was passed on the basis of the statement of the counsel to the said effect recorded on oath, whereas the impugned decree was alleged to be based on a family partition but neither there was any document to prove the family partition nor from the pleadings of the parties and their conduct existence of a family partition was proved. The revenue documents negatived existence of a family partition.

In any case, the explanation of Order 23 Rule 3 of C.P.C. postulates that an agreement which is void or voidable under the Act of 1872 (9 of 187) shall not be deemed to be lawful within the meaning of this rule. When the consent decree suffered by Kaur Singh was ineffective being against public policy and against the provisions of the Act of 1908, the suit

filed by Kaur Singh was not barred under Order 23 Rule 3-A of C.P.C.

20. In addition to the above, it is important to note that defendant Teja Singh did not opt to appear in the witness box to rebut the deposition of plaintiff Kaur Singh and his witnesses. He may have appeared prior to framing of issues and made a statement that no fraud was committed by him with his father Kaur Singh, but that was not enough because he did not step into the witness box so as to rebut the deposition of plaintiff Kaur Singh and the independent witnesses examined by him and to allow the opposite party an opportunity to cross examine him. When the right of cross-examination had been declined, his statement prior to the issues could also not be used in his favour and resultantly due to his absence from the witness box, an adverse inference needs to be drawn against him. It can be said that the facts stated by plaintiff Kaur Singh remained unrebutted and unimpeached by him.

Thus, seen from every angle the appeal filed by defendant Teja Singh has no merit and is hereby dismissed.

(SNEH PRASHAR)
JUDGE

March 04, 2015

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