

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2213 of 1993 (O&M)
Date of Decision:- 04.02.2015.

Anand Pal

.....Appellant

Versus

Dafedar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Adarsh Jain, Advocate with
Mr. Yashpal Thakur, Advocate for the appellant.

Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjeet Singh, Advocate for the respondents.

SHEKHER DHAWAN, J.

The present Regular Second Appeal is directed against judgment and decree dated 21.05.1993 passed by learned Additional District Judge, Gurgaon, whereby, appeal filed by the plaintiff-appellant was accepted and judgment and decree dated 19.08.1989, passed by the learned Senior Sub Judge, Gurgaon was set aside and suit of the plaintiff was decreed for possession in respect of the

suit land measuring 2 kanals 7 marlas.

For the sake of convenience, parties are being referred as per their status before the trial Court.

The detailed facts of the case are not required to be recapitulated, as the same have been mentioned in judgments of Courts below. However, brief facts, for the purpose of decision of the present appeal are that plaintiff-respondent Dafedar and others filed suit for possession of the land measuring 7 kanals 7 marlas comprising killa No.34, khewat No.3, khata No.4 rect. No.30 claiming themselves to be owner and in possession of the land. Plaintiff also sought consequential relief of permanent injunction on the ground that some portion of killa No.24 has been illegally encroached upon by the defendant about 1½ year back and the defendant threatened to raise construction thereon.

Defendant-appellant contested the suit. The ownership as well as possession of the suit land was denied. Main stand taken by the appellant/defendant that Ganga Ram was common ancestor of the parties to the suit and his descendants were the joint owners of *pucca haveli* bearing killa No.79 (3 kanal 2 marla), khasra No.119 and killa No.24 which was *gair mumkin*. At the time of consolidation, Kanhi Singh and Jawani Singh whose names appeared in the pedigree table described in para 3 of the written statement had 1/4th share, Lila Singh 1/4th share, Gorkhi Singh 1/4th share and Jasmal etc. 1/4th share in the said properties. On the

basis of mutual settlement, the suit land was allotted to Gorkhi Singh, the grand father of the defendant. Said Gorkhi Singh died in the year 1956. Appellant/defendant being pre-deceased son of Gorkhi Singh inherited his estate and since then he has been in possession of the land i.e. since 1950, as owner. Construction of 2 *pakka* rooms and 2 *kacha chappers* had fallen down about 6 years prior to filing of the written statement. Defendant had planted a number of trees out of which about 15 trees are still standing. The land was being used for residential purpose, tethering of cattle and various other domestic purposes. Plea was also taken that although plaintiffs are neither owner in possession of the property in dispute but they were recorded as owner in possession and when the error came to the knowledge of the defendant, the *khasra girdawari* entries were got corrected in his favour in Kharif 1981 with notice to the plaintiff.

On the basis of pleadings and amended pleadings, following issues are framed:-

1. Whether the plaintiffs are owners in possession of the suit land? OPP
2. Whether the plaintiffs have locus-standi to file the suit?
3. Whether the suit is within limitation? OPD
4. Whether the plaintiffs are estopped from filing the suit by their act and conduct ? OPD
5. Whether the defendant has become owner by the alleged settlement? OPD

6. If issue No.5 is not proved the plaintiff is become owner by adverse possession?

7. Whether the suit is maintainable in present form? OPD.

7(a) Whether the application to bring the LR's. of plaintiff No.8 Jwani Singh was time barred and suit has abated, as alleged? OPD.

7(b) Whether plaintiff No.7 Gopi Devi died about 1 ½ years ago and the suit has abated? OPD

7(c) Whether the delay in moving the application for bringing the LR's on record is liable to be condoned? OPP

7(d) Whether the suit is bad for non-joinder of necessary parties? OPD

7(e) Whether the plaintiffs have made unauthorised amendment, in the plaint, if so its effect? OPD

8. Relief.

Both the parties led their respective evidence and learned trial Court, after considering the material and evidence available on the file decided issue No.1 partly in favour of the plaintiff that plaintiff is in possession of 7 marla land but his possession is unauthorized. Remaining suit land of killa No.24 is in the ownership and possession of plaintiff. Issue Nos.2, 3, 4 and 7 were decided in favour of the plaintiff and against the defendant. Issue No.5 was decided in favour of defendant. No findings were returned on issue No.6 having

become redundant.

Issue Nos.7(a) to 7(e) were decided against the defendant and, consequently, the suit of plaintiff for possession was decreed partly in respect of 7 marla land out of land measuring 2 kanals 7 marlas whereas the suit in respect of 2 kanals of land, rectangular in shape and adjoining to killa No.24 was dismissed as the defendant had become owner of the land on the basis of settlement arrived at between the parties.

Being aggrieved of passing of said judgment and decree and findings having been returned against plaintiff partly, plaintiff had filed appeal before learned Additional District Judge, Gurgaon and the said appeal was accepted and judgment and decree of trial court dated 19.08.1989 were set aside. Learned court of First Instance passed a decree for possession in respect of suit land measuring 2 kanals 7 marlas comprising khewat 3 khata No.4 rectangular No.30 killa No.34 situated within the revenue estate of Village Sehjawas.

Being aggrieved of passing of the said judgment and decree dated 21.05.1993 by learned court of First Appeal, defendant-appellant has filed the present second appeal.

At the time of admission of appeal, no substantial questions of law were settled. It is settled proposition of law that substantial questions of law are required to be settled at the time of admission of second appeal and in case substantial questions of law were not framed at the time of admission of second appeal, the same

can still be framed and the controversy can be decided by way of second appeal so as to finally decide the claims between the parties. It is to be seen whether any substantial questions of law are actually involved in the case or not. Such a law was laid down by Hon'ble Supreme Court in case titled as **Easwari Vs. Parvathi and others**, 2014 (3) RCR (Civil), 955, wherein it has been observed as under:-

“In light of the above decisions we are of the opinion that the High Court cannot be precluded from reversing the order and judgment of the Lower Appellate Court if there is perversity in the decision due to mis-appreciation of evidence. This holds good especially in light of the principle that even when both the Trial Court and the lower court have given concurrent findings, there is no absolute ban on the High Court in second appeal to interfere with the facts.”

As per law laid down by Hon'ble Supreme Court in above referred judgment and facts of the case, the real controversies involved in this case are

- (i) whether family settlement arrived at before the Civil Court requires compulsory registration under the Registration Act?
- (ii) Whether the judgment passed by learned Lower Appellate Court is illegal and liable to be set aside being perverse and as a result of misappreciation of evidence and law?

At the time of arguments, Sh. Adarsh Jain, Advocate, learned counsel for the appellant took the plea that most of the facts are not disputed in this case. Main suit for possession of 2 kanals 7 marlas of land was filed by plaintiff. The *khasra girdawari* relating to land measuring 2 kanals 7 marlas was changed in the year 1981 in favour of defendant-appellant on the basis of *Roznamcha Vakiyat* of 1981-1982 (Exhibit DN). Site plan of the disputed land measuring 2 kanals 7 marlas is Exhibit DW-1/2. The said land was recorded to be in the ownership of the plaintiff. A family settlement had taken place between the plaintiff and defendant and other members of the family whereby land measuring 2 kanals 7 marlas of killa No.24 was given to him in the year 1950 and plaintiff had raised construction and planted trees on the said land after settlement. Defendant appeared as DW-2 and took the plea that a family settlement had taken place in 1950. The same was oral one and suit land fell to the share as per compromise (Exhibit DA). Nathu Singh, DW-3 corroborated the testimony of defendant that Exhibit DA is the certified copy of the compromise. The same was executed in his presence and he had signed the same compromise/family settlement as a witness.

Learned court of First Instance rightly observed that compromise (Exhibit DA) is available on the file and the said family settlement was arrived at between the parties on 30.01.1986. Plaintiff was party to the compromise so the same is binding upon him. As per clause 3 of settlement, 2 kanal area of killa No.24

wherein defendant Anand Pal had constructed 2 rooms was given to him. At that stage, Dafedar plaintiff had denied the genuineness of the mutual settlement on the ground that his signatures were obtained on the same were not read over to him. Learned Court of First Instance relied upon compromise (Exhibit DA) mainly on the ground that the same stood proved as per testimony of Nathu Singh DW-3 as well and the possession of defendant over land measuring 2 kanal of killa No.24 was acknowledging possession of the defendant. The findings were returned by learned Court of First Instance. That defendants in pursuance of family settlement arrived at between the parties had acquired ownership rights of 2 kanals of land of killa No.24 but he is in possession of 2 kanals 7 marlas of land as such, his possession of 7 marlas of land was unauthorized and the remaining suit land of killa No.24 is in the ownership and possession of plaintiff.

The said findings were reversed by learned Court of First Appeal mainly on the ground that compromise (Exhibit DA) is not binding as the same was recorded in suit No.206 of 1983 and respondent Anand Pal was not a party to the suit. Therefore, no pleading to show that the settlement was oral one and what were the compromise arrived at between the parties. Learned Court of First Appeal returned the findings on the ground that compromise (Exhibit DA) required compulsory registration. The said compromise was not only the subject matter of the suit land but also included other

immoveable properties apart from suit land and the same required compulsory registration under Section 17 of Indian Registration Act, 1908.

In support of his arguments, learned counsel for respondents placed reliance upon judgment from Hon'ble Supreme Court of India in case **Bhoop Singh Vs. Ram Singh Major** 1995 (2) HLR 432 and 1996 AIR (SC) 196 wherein law was laid down that Registration Act 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 present in immoveable property of the value of Rs.100 or more. Reliance was also placed upon judgment of this Court in case **Harpal Singh and others Vs. Mohinder Singh and others** 2002 (2) HLR 58 wherein law was laid down that if the document written in present form and not recording past transaction creating right in property and not proved to be a family settlement. In that case, the document creates a right in land and the same requires registration under Section 17 of the Registration Act. On the same point, reliance was placed upon judgment of this Court in case **Nachhattar Singh and another Vs. Jangir Singh and others** 2005 (1) RCR (Civil) 776, **Jai Narain Vs. Smt. Sona Devi** 2006 (2) RCR (Civil) 213 and **Mukhtiar Singh Vs. Balwinder Singh** 2009 (2) RCR (Civil) 113.

In the above referred judgments from Hon'ble the

Supreme Court as well as from this Court, law was laid down that the decree which creates rights for the first time, the same required compulsory registration under Section 17 of the 'Act'.

Similar matter had also gone before Hon'ble Supreme Court in case **Ganeshi (dead) through LRs and others Vs. Ashok and another** (2011) 15 Supreme Court Cases 417 and law was laid down that in matters where family settlement was bona fide to avoid dispute in family, the same does not amount to alienation of property if the decree was passed only in pursuance of that settlement, the same cannot be interfered with because a family settlement does not effect transfer of property.

As regard to registration of compromise agreement (Exhibit DA), the matter was before Hon'ble Division Bench of this Court in case **Gurdev Kaur and another Vs. Mehar Singh and others** 1989 (2) RRR 499 and law was laid down that if compromise decree creating title in respect of immoveable property as per provisions of Order 23 Rule 3 of the Code of Civil Procedure, the same does not require registration. Quite identical are the facts of the case in hand because admittedly compromise (Exhibit DA) was entered into between the parties during pendency of civil case and as such, the same does not require registration.

Taking the case from another angle, the consent decree could not be challenged by a party to the decree except on the ground of fraud or collusion or on the ground that the Court was not

having jurisdiction to decide the matter in the case in hand, the decree could not be challenged by a party to the litigation.

As in the case in hand, the family settlement had been arrived at between the members of the family, the memorandum itself does not create or extinguish any rights in immoveable properties, as such the same does not fall within the mischief of Section 17 (2) of the Registration Act as such the same is not compulsorily registrable. Such a law was laid down by Hon'ble Supreme Court in case **Kale and others Vs. Deputy Director of Consolidation and others** 1976 AIR (SC) 807 as regard to sanctity of family matters, the matter was before Hon'ble Division Bench of this Court in case **Ramji Dass and others Vs. Dhantu Ram and others** 1979 PLR 41 and law was laid down that if the close relations had entered into a family arrangement and once they had done so, it is not open to either of the parties to back out of it.

In view of the above law laid down by Hon'ble Supreme Court as well as Hon'ble Division Bench of this Court in above referred judgments and facts of the case in hand, compromise (Exhibit DA) was on the basis of family arrangement having been made by family members, the same compromise was during pendency of the litigation and the parties to the litigation cannot dispute the legality of the same. The said memorandum does not require compulsory registration and that compromise (Exhibit DA) cannot be ignored. Learned Court of First Appeal had fallen in error

in recording such observations which resulted into miscarriage of justice. The said findings recorded by learned court of First Appeal are set aside. Resultantly, present Regular Second Appeal is accepted. Judgment and decree passed by learned Lower Appellate Court are hereby set aside and the judgment and decree passed by learned Court of First Instance are accepted and restored.

(SHEKHER DHAWAN)
JUDGE

February 04, 2015.

sandeep sethi