

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Regular Second Appeal No.852 of 2009 (O&M)

Date of decision: 12.3.2015

Mamraj Singh

... Appellant

Versus

Prem and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.C.B.Goel, Advocate,
for the appellant.

Mr.Arun Yadav, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This is an appeal against the judgment of reversal dated 15.1.2009 passed by the learned Additional District Judge, Rewari against the judgment and decree of the learned Civil Judge (Junior Division), Rewari dated 22.2.2007 allowing the suit.

2. Indisputably, late Ram Chander was a share holder in the ancestral property which became subject matter of the present suit. The positive findings are that the property was not self-acquired and devolved on Ram Chander in terms of Section 6 of the Hindu Succession Act, 1956 by way of succession. Ram Chander was the maternal grandfather of the

appellant Mamraj Singh. Ram Chander died on 2nd April, 1994. He left behind three daughters, Prem, Anoop and Sumer. The appellant is the son of Anoop. Respondent No.1 is the younger sister of Anoop. She is also said to be the wife of the younger brother of the father of the appellant. Parties are thus in dual relationship. It transpires that Ram Chander in his life time and about 2 years before he passed away entered into a collusive decree dated 27th April, 1992 in a suit titled *Mamraj Singh v. Ram Chander* instituted in the Court of the learned Sub Judge, Rewari which was decreed on 27th April, 1992 declaring Mamraj Singh as the adopted son of his maternal grandfather Ram Chander. On the basis of the consent decree, the suit property found its way in the revenue records with mutation sanctioned in favour of appellant-defendant No.1 inter-vivos.

3. Prem, daughter of Ram Chander asserted her right to property by natural succession and brought civil suit No.140 of 1999 on 3rd August, 1999 for declaration of her rights according to her share. There is no dispute that Ram Chander died interstate leaving behind his 3 daughters. He bore no son. She claimed in the suit that the consent decree was the result of fraud played by Mamraj Singh to prevent her rights in corpus property. The consent decree in *Mamraj Singh v. Ram Chander* was collusive and not binding on her rights by way of natural succession. The adoption, if any, which is stated to have taken place in 1974 was not sanctified by procedure established by law relating to adoptions in its well recognised rituals and ceremonies nor was registered. No ceremony was performed nor was there any giving and taking by the parents of Mamraj Singh and the maternal grandfather Ram Chander. Mutation No.115 dated 3.2.1993 and revenue

entries based thereon were null and void and not binding on the rights of the plaintiff. Defendant No.1 Mamraj Singh, the appellant before this Court had no pre-existing rights in the disputed property. If there were no pre-existing rights vesting in him, there could be no valid family settlement entered between late Ram Chander and Mamraj Singh, the property being ancestral in nature. In the plaint, she pleaded that she learnt of the consent decree when she visited the office of the Halqa Patwari in 1999 and on gaining knowledge of the same, she brought the suit to assert her rights to the disputed property.

4. The defendants contested the suit relying on the decree asserting that late Ram Chander had adopted Mamraj Singh in his childhood and thereafter, the boy lived in village Siha as the adopted son of Ram Chander under his guardianship and care. This fact was known to all the villagers of village Siha. If the decree was binding then so were the revenue entries and, therefore, Mamraj Singh had become owner in possession of the disputed property.

5. Parties went to trial on the following issues in support of their respective cases : -

“1. Whether the plaintiff and defendants No.2 and 3 are the joint owner in possession of the suit land?

2. Whether the decree and judgment dated 27.4.1992 titled Mam Raj Singh Vs. Ram Chander is illegal, null and void?
OPP

3. Whether the mutation No.1152 dated 3.3.93 sanctioned on the basis of judgment and decree is illegal, null and void?

OPP

4. Whether the revenue entries regarding the suit land in favour of the defendant No.1 are illegal, null and void? OPP

5. If issue No.1 is not proved, whether the plaintiff and defendants No.2 and 3 are entitled to get the decree for joint possession in equal share? OPP.

6. Whether the plaintiff has no right to file the suit? OPP

7. Whether the suit of the plaintiff is not maintainable in the present form? OPD

8. Whether the suit is barred for non-joinder and misjoinder of necessary parties? OPD

9. Whether the plaintiff is estopped by her act and conduct in file the suit? OPD

10. Whether the plaintiff has no cause of action to file the suit? OPD

11. Whether the suit is time barred? OPD

12. Relief.”

6. Both documentary and oral evidence was led in support of their respective cases and the evidence was closed by the defendants in September, 2006 and rebuttal evidence was tendered in February, 2007.

7. Issues No.1 to 5 were taken up together by the learned trial Court since they were interconnected and could be disposed of by a common discussion. The consent decree was exhibited on record as Exb. P6. The plaintiff asserted that the consent decree was compulsorily registrable before it could legally operate in the eyes of law. As it was not registered, it

deserves to be set aside. On perusal of the plaint filed in the earlier suit as PW5/A on the trial Court record, it is confirmed that two pleas were taken by Mamraj Singh in defence of the suit; one of adoption and the other of adverse possession. In obtaining a consent decree a fraud was played upon her rights as a truthful shareholder of corpus. Reliance on a family settlement could not be legally placed as Mamraj Singh could not participate in such a settlement since on the expiry of late Ram Chander, her daughters became exclusive owners of the suit property by succession. The question really was as to the effect of the consent decree being collusive in nature and therefore ineffective and avoidable.

8. As a point of fact, defendants asserted that late Ram Chander did not challenge the decree during his life time and it was thus urged that it cannot be challenged by the plaintiff on the ground of fraud and misrepresentation after the death of Ram Chander. Mamraj Singh claimed himself to be the adopted son of late Ram Chander in terms of Section 9 of the Hindu Adoption and Maintenance Act, 1956 as his father gave his minor son to late Ram Chander with the consent of the mother Anoop, defendant No.2.

9. However, plaintiff asserted that the essential ingredients in Section 9 of the Act were not satisfied in the case as Mamraj Singh was not given in adoption by his father with the consent of the mother in accordance with the law applicable. Mere giving in adoption by the mother is insufficient for making defendant No.1 the adopted son of Ram Chander. Appearing as own witness the plaintiff as PW3, admitted that Mamraj Singh used to live with her father but then all of them lived in a joint family with

late Ram Chander. Mamraj Singh serves in the army. The cause of action which brought Mamraj Singh to institute the suit in 1992 was that he had called upon the defendants to abide by the family settlement. It was in this background that the written statement was filed by Ram Chander conceding the claim of Mamraj Singh. It is a point of fact that the alleged family settlement has not found its way in the evidence on record. There could be no iota of doubt in view of the oral testimonies on record that Mamraj Singh was not legally adopted but was brought up and educated by Ram Chander. Learned trial Court disbelieved the story of adoption but held that Mamraj Singh was not a stranger to the family settlement effected between him and his maternal grandfather. It is a matter of some concern that the trial Court records that the daughters of late Ram Chander had no pre-existing rights in the disputed property and, therefore, there was no necessity of their consent at the time of passing of the decree Ex.P6. It is enough that there must be some semblance of rights in the property which are sufficient for effecting a family settlement. Such a decree did not require registration.

10. On the plea of fraud and misrepresentation in challenge to the decree, the learned trial Court found no available evidence to support such a finding. The contrary plea taken in the previous suit is not sufficient to constitute an inference of fraud committed by Mamraj Singh on the Court which passed the decree in the previous suit. Learned trial Court relied on the decision of this Court in **Harpal and others v. Smt.Ram Piari and others**, 1981 PLJ 492 holding that a consent decree being collusive and fraudulent cannot be countenanced and the parties cannot go behind the earlier decree when the decree settles rights of the parties and for the

subsequent Court to find out as to whether it was passed on right or wrong reasons/facts. The subsequent Court cannot go into facts as to whether on that basis the consent decree could be passed.

11. The trial Court held parties bound by the previous decree and the mutation sanctioned under the decree was lawful document and of binding value. It was noticed that the revenue record over and above the evidence of Mamraj Singh reflects his joint possession over the suit property. For this mutation Ex.P1 and Jamabandi Ex.P2 of the year 1993-94 were examined and the presumption of truth was attached unless rebutted by the opposite side on the question of knowledge of passing of the consent decree. For this, the trial Court read the oral evidence of PW3 where she said that her father had no knowledge of the decree and she does not know whether the decree was passed during his life time or after his demise. She went on to depose that after expiry of his father, she became acquainted with the true facts and thereafter filed the suit. She deposed that these facts were stated to her by Mamraj Singh when she demanded her share of the disputed property. In order to conclude either way as to what was testified in Court, the statement of the plaintiff deserves to be read and is thus reproduced in translation in its extract: -

“.....I do not know whether my father had any knowledge about the passing of the decree. I do not know whether the decree was executed during the life time of my father or after his demise..... “

12. From the statement as above, it is apparent that the learned trial Court misread this part of the testimony. The plaintiff did not make any contradictory statement and, therefore, it cannot be held on the evidence that

the plaintiff had knowledge of the decree in question but remained wilfully silent till she filed the suit on 3rd June, 1999. If the pleadings in the plaint in paragraph 8 with respect to knowledge gained from visit to the Halqa Patwari is not inconsistent with the oral testimonies of the plaintiff, then it cannot be said beyond doubt that she knew of the decree to which she was not a party and which affected her rights. The suit was dismissed as belated. However, adoption was not proved.

13. Aggrieved by the judgment and decree of the trial Court, the plaintiff preferred Civil Appeal No.01 of 2007 before the learned Additional District Judge, Rewari. There is no need to traverse the facts of the case in appeal since the appellate findings are alone required to be examined since the statements of the witnesses of both the parties have been elaborately jotted down in the judgment.

14. On the question whether defendant No.1 had pre-existing rights in the suit property and whether he was the legally adopted son of late Ram Chander, the lower Appellate Court has endorsed the view of the learned trial Court and concluded that defendant No.1 was not a adopted son. To that extent the finding is not open to interference in second appeal since both the courts of fact have concluded in favour of the plaintiff.

15. Appellant/Defendant No.1 admitted that the earlier suit was filed on the ground of family settlement which had taken place in the presence of Balbir and Lumberdar Dharampal but the said family settlement was not filed either in the previous suit, nor in this suit. Indisputably, late Ram Chander was a shareholder in the ancestral property mentioned in paragraph 1 of the plaint. It is past cavil that the property was not self-

acquired property of late Ram Chander and on his death, the succession would open in accordance with the Hindu law of natural succession. Merely because Mamraj Singh defendant No.1 was residing with his maternal grandfather is not sufficient to create a pre-existing right in the property and the decree was ex facie a collusive one in diversion of right to natural succession of the three daughters equally of the estate left behind by late Ram Chander who died without executing a testamentary Will. If he was not an adopted son, he is dispossessed of any pre-existing right in the suit property. On the issue of the alleged family settlement, the lower appellate Court noticed and followed the law laid down by this Court. If the adoption is not proved, then the basis of the family settlement becomes non-existent and, therefore, the decree can be held to have been procured by practicing fraud, misrepresentation and deceit. It is well settled that before a family settlement can be accepted as valid, it is necessary that it should appear to be bonafide and genuinely one which resolves family disputes and rival claims and signatories to the family arrangement must have an antecedent title, claim or interest in property or even chances of succession. If the family settlement existed and was written down it was the best document to be produced in defence but was withheld which lends credence that it was imaginary, if that is so then the foundation of the previous suit was weak. Learned Appellate Court has examined the issue from the proper perspective after applying the law laid down in various judgments of this Court and of the Supreme Court and has rightly reversed the decree. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab-initio. The word fraud and

deception are synonymous. The Court applied the law in **Ram Chandra Singh v. Savitri Devi and others**; 2004 (2) LJR 362 (SC) in para. 22 and 25 as under : -

“22. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. In *Arlidge & Parry on Fraud*, it is stated at page 21: "Indeed, the word sometime appears to be virtually synonymous with "deception", as in the offence (now repealed) of obtaining credit by fraud. It is true that in this context "fraud" included certain kind of conduct which did not amount to false pretences, since the definition referred to an obtaining of credit "under false pretences, or by means of any other fraud". In *Jones*, for example, a man who ordered a meal without pointing out that he had no money was held to be guilty of obtaining credit by fraud but not of obtaining the meal by false pretences: his conduct, though fraudulent, did not amount to a false pretence. Similarly it has been suggested that a charge of conspiracy to defraud may be used where a "false front" has been presented to the public (e.g. a business appears to be reputable and creditworthy when in fact it is neither) but there has been nothing so concrete as a false pretence. However, the concept of deception (as defined in the Theft Act 1968) is broader than that of a false pretence in that (inter alia) it includes a misrepresentation as to the defendant's intentions; both *Jones* and the "false front" could now be treated as cases of obtaining property by deception."

25. "...The principles of "finality of litigation" cannot be passed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous

persons from all walks of life find the court- process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.... A fraud is an act of deliberate deception with the design of security something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage... A litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."

16. On the issue of registration of the consent decree, the Court has applied the law and held that where a family settlement creates a right in the property for the first time, registration is necessary. In the present case when concurrent findings have been returned that appellant-defendant No.1 was not an adopted son, then he appears not to have pre-existing right in the disputed property. The learned lower appellate court read the evidence of Shri Ram DW1 and Rati Pal Singh DW2 correctly where they admitted in their cross-examination that during the life time of late Ram Chander, no partition had taken place of the suit property and till his death, he was in cultivating possession of the suit property. It is admitted by DW2 that Mamraj Singh never cultivated the suit property. On the basis of these oral testimonies of the defence witnesses, the first appeal court has concluded that Mamraj Singh was never in possession of the suit property nor was the suit property handed over by late Ram Chander to Mamraj Singh.

17. On the point whether the suit was barred by limitation or not, the lower appellate Court has reversed the findings of the learned trial Court by holding that the Court before him had gone on a presumption that knowledge of the decree can be imputed from the very beginning on the plaintiff and the pleadings on the point in the plaint are sufficient to draw a presumption when read with the testimony of PW3, the plaintiff that she knew of the decree but failed to seek legal redress within the time allowed. No evidence in rebuttal was produced by the defendants that the plaintiff had knowledge of the decree prior to June, 1999. Limitation would start only from the date of knowledge which was June, 1999. The provisions of article 59 of the Limitation Act were misread when the previous decree was by consent and was collusive in nature. In the litigation filed by Mamraj Singh against his maternal grandfather the latter admitted his claim in the written statement upon which the decree was drawn. This shows an act of deceit and fraud played on the ancestral property of late Ram Chander and the learned lower appellate Court has rightly reversed the decision of the learned trial Court on this issue. On a reading of the judgment of the learned appellate Court in all its facets, I find no cogent ground and much less a substantial question of law in this appeal sufficient to disturb the findings of the learned lower appellate Court which are affirmed. The adoption was not proved and both the courts have returned a concurrent finding on this point. The suit was collusive and the decree was obtained by consent in a civil conspiracy hatched between the plaintiff and the defendant in the previous suit to unsettle the settled rights of the daughters of Ram Chander including the plaintiff, defendant No.2 being none other than the mother of defendant

No.1 and, therefore, a person materially interested in the preservation of the consent decree to favour her son at the cost of the plaintiff-respondent No 1 in the present appeal.

18. For the foregoing reasons, I would dismiss the appeal after hearing the parties at some length. The suit was maintainable and not barred by limitation.

(RAJIV NARAIN RAINA)
JUDGE

March 12, 2015

Paritosh Kumar