

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

RSA No.2540 of 2011 (O&M)

Date of Decision: 31.7.2015

Bhag Chand and another Appellants

Versus

Ram Kumar and another Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:Mr.P.S.Jammu, Advocate for the appellants

Mr.Ajay Jain, 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. (Oral)

The dispute is with regard to land of Ganpat Ram who had four sons. All of them entered into a family arrangement and arrived at a settlement on the basis of which the four brothers filed Civil Suit No.278/91 in the Civil Court at Sirsa against their father, Ganpat Ram to give effect to the family settlement and to divide the property in equal shares amongst the four brothers to the exclusion of the father.

Before the trial effectively commenced, an application was moved under Order 6 Rule 17 of the CPC. It is the case of Mr.Jain, learned counsel for the defendant/respondent that his client, namely, Ram Kumar, the 4th brother, was neither consulted nor his consent

taken when the application was filed to amend the pleadings. In support of this assertion, Mr.Jain submits that the application is not signed by the present defendant, and therefore, he had no knowledge that such an application was to be presented before the Civil Court. On the date when the application was posted for hearing, Ganpat Ram appeared and admitted the claim and an order was passed on the statement of Ganpat Ram and the application was allowed and the suit was decreed as prayed for on the basis of family settlement on 28.5.1991. On the basis of which, the decree was drawn on the same day dividing the property of Ganpat Ram in four equal shares amongst the four brothers. This was the end of Chapter-I of the litigation.

When the file was to be consigned to the record room, the trial Judge realised that the decree in fact had to be drawn in favour of three of the brothers to the exclusion of the 4th brother in view of the statement made by father-Ganpat Ram and the prayer made in the application under Order 6 Rule 17 of the CPC. Realising the mistake the Court suo motu set about correcting it after calling for the file without notice to parties. The trial court corrected the decree and drew a fresh one in the name of the three plaintiffs. This was ordered on 20.6.1991. The present defendant/respondent had no knowledge of change in the decree. Meanwhile it transpired that on the basis of the original decree, mutation no.1563 was sanctioned by the revenue authorities on 7th June, 1991 which entered the names of all the four brothers in the record of rights. This was the end of Chapter II of the litigation.

Chapter III of the litigation begins when the present appellants filed a suit for declaration after 13 years on 2nd June, 2004 against the

present respondent for declaration to the effect that they are owners of the suit property to the exclusion of the defendant in terms of the modified decree and the judgment and decree dated 28.5.1991 and the subsequent mutation and the entries in the jamabandies resulting from the original decree are illegal, null and void and not binding on the rights of the three plaintiffs.

On notice issued, the defendant appeared and contested the case. The defendant submitted that his three brothers in collusion with each other had devised a novel way to scuttle his rights by sleight of hand by presenting their father Ganpat Ram in Court to make a statement in their favour readily agreeing with the amendment sought and in this manner the application for amendment of the plaintiffs was allowed at the back of the defendant. This is how deceit was practised and the fresh decree drawn in the name of rectification.

The trial court decreed the suit by the judgment which has been reversed in appeal. The Court of First Appeal had agreed with the defendant that the application under Order 6 Rule 17 of the CPC and the statement based thereon made by Ganpat Ram was behind his back, and therefore, was not binding on him. He prayed that the original decree was in accordance with the family settlement and that was how the four brothers had instituted the suit together against the father and till such time they were *ad idem* that the properties of Ganpat Ram during his life time should be distributed equally amongst the four brothers. The brothers may have been *ad idem* in the beginning but were not when the application under Order 6 Rule 17 of the CPC was presented whereupon the trick was played blatantly with the rights of the defendant in the suit property.

The Court of First Appeal returned a finding that wrong was indeed committed upon the defendant by the three brothers with the help of the father at the stage of filing and deciding the application under Order 6 Rule 17 of the CPC. But the court was fair in holding that on the death of Ganpat Ram, in view of the family settlement coupled with intestate succession opening, the property would devolve equally on all the four brothers. Consequently, a direction was issued that the revenue authorities would sanction mutations and make revenue entries on the basis of inheritance which mercifully puts the defendant back in the position of the original decree where all four were equal. In these circumstances, the issue of family settlement does not remain a triable issue since the rights of the parties are to be governed by natural inheritance. If the three brothers relied on the family settlement at the time of institution of suit when all four brothers were parties and three of them departed to obtain orders slyly behind the back of the defendant, then the three reneged from the family settlement and failed to honour it. If that be the position, then there is no necessity to remand the case back to the stage of the application under Order 6 Rule 17 of the CPC and it would suffice to maintain the findings of the Court of first appeal which are fair and just inasmuch as succession would open by inheritance on the death of Ganpat Ram and the suit property would devolve equally on the four brothers.

In view of the above discussion, I find no reason to interfere in the just and fair dispensation of justice at the hands of the Court of First Appeal in its judgment and decree dated 13th May, 2011 and would dismiss the appeal which in any case does not involve any question of law much less than a substantial question of law for

adjudication.

For the foregoing reasons this appeal is without merit and is ordered to be dismissed with costs in all the courts.

31.7.2015
MFK

(RAJIV NARAIN RAINA)
JUDGE