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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2506-2003

Date of Decision : April 26th, 2016

Smt. Santra

.... Appellant

Versus

Bhup Singh and another

.. Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Manoj Kumar, Advocate,
for Mr. C.B.Goel, Advocate,
for the appellant.

Mr. Sudhir Aggarwal, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Plaintiff's present Regular Second Appeal against the concurrent findings of both the Courts below, whereby, suit filed by her was dismissed by the Court of first Instance vide judgment and decree dated 17.04.2002.

The appeal filed by the plaintiff was also dismissed by learned Additional District Judge, Gurgaon vide judgment and decree dated 31.01.2003.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this

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appeal; that plaintiff, Smt. Santra daughter of Shatias [defendant No.2] filed a suit for declaration and possession to the effect that the judgment and decree dated 31.7.1995 passed by Senior Sub Judge, Gurgaon in case titled – **Bhup Singh Vs. Shatia** are illegal, void and are result of fraud and mis-representation as the same was without any consideration and legal necessity and never created any right or title in respect of the suit property in favour of defendant No.1 and the subsequent revenue record prepared on that basis is also liable to be set-aside. As per the plaintiff, she is the real daughter of defendant No.2 and is Hindu by religion. Defendant No.2 was the owner of the agricultural land. The plaintiff and defendant No.2 are *Ahirs* by caste and agriculturist by profession and also governed by custom in the matter of alienation and succession. The suit land was ancestral property and could not be alienated or transferred by defendant No.2 without consideration and legal necessity and the decree having been suffered by defendant No.2 is liable to be set-aside.

4. Defendant No.1 contested the suit taking the plea that he is real brother's son of defendant No.2 and had been looking after defendant No.2 because the plaintiff never bothered to look after him. Defendant No.2 had every right to alienate/transfer the suit land in favour of defendant No.1. The nature of suit land was admitted to be ancestral. As per defendant No.1, the plaintiff used to reside with her husband at village Rampura. Defendant No.2 had appeared in person before the Court and had thumb-marked on the written statement, vakalatnama and on his statement recorded before the Court and on the basis of that, the decree was passed and there was nothing to set-aside the judgment and decree dated

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31.7.1995 and the suit is liable to be dismissed.

5. Defendant No.2 himself filed separate written statement, *inter alia*, taking the plea that the decree dated 31.7.1995 was passed in accordance with law. He himself had appeared in the Court and thumb-marked the written statement, vakalatnama and his statement having been recorded by the Court and on the basis of which, decree dated 31.7.1995 was passed. As per defendant No.2, defendant No.1 is his real brother's son and the decree passed in favour of defendant No.1 is legal, binding and the suit be dismissed being without any merit.

6. On the pleadings of the parties, the Court of first instance settled the issues. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance dismissed the suit of the plaintiff. The appeal filed before the Court of first Appeal was also dismissed. As such, the present Regular Second Appeal.

7. While admitting the present appeal, vide order dated 02.08.2004, the following substantial questions of law were framed for consideration by this Court :-

1. Whether any title can pass on in favour of defendant No.1 on the basis of the consent decree suffered in his favour by defendant No.2, more particularly when admittedly defendant No.1 had no pre-existing right in the suit property?
2. Whether there can be any family settlement between defendant No.1 on the one hand and defendant No.2 on the other hand when they are not members of the same family?
3. Whether the plaintiff who is admittedly the daughter of defendant No.2 can maintain the present suit to challenge the decree in order to protect her rights to succeed the

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property in question?

8. While arguing on these points, learned counsel for the appellant submitted that both the Courts below completely ignored the fact that the suit property cannot be alienated by defendant No.2 in favour of defendant No.1 to the exclusion of present plaintiff, who is his real daughter. More so, no pre-existing rights were in favour of defendant No.1 and as the rights were created for the first time in favour of defendant No.1 on the basis of decree dated 31.7.1995, the same requires compulsory registration as per law laid down by Hon`ble Supreme Court in **Bhoop Singh Vs. Ram Singh and Others**, **1995 HRR 585** and the Court below completely ignored this fact while dismissing the suit of the plaintiff and the impugned judgments and decrees are liable to be set-aside.

9. On the other hand, learned counsel for the respondents submitted that the decree was passed prior to enactment of the Hindu Succession [Amendment] Act, 2005 [Act No. 39 of 2005], which come into force with effect from 9th September, 2005. He further submitted that defendant No.2 himself had admitted due execution of decree in favour of defendant No.1. There is no illegality in the judgment and decree dated 31.07.1995. The said decree does not require compulsory registration under Section 17 of the Registration Act, 1908 as the same was a consent decree and the present appeal is without any merit and the same be dismissed.

10. Having considered the submissions made by learned counsel for the parties, the following points are involved in the present appeal:-

- i). Whether defendant no.2 could alienate the property in favour of defendant No.1 to the exclusion of his daughter by way of consent decree?

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- ii). Whether defendant No.2 constituted family with defendant No.1 also and as such was competent to execute consent decree in favour of defendant No.1?
- lii). Whether the consent decree was validly executed by defendant No.2 or the same was result of fraud or misrepresentation?

11. The term “family” does not connote narrow perception so as to exclude every body, except son and daughter. In the Hindu Undivided Family, even the close family relations are considered to be family members at least for the purpose of transferring of certain rights in favour of the members of the family out of love and affection and on account of services having been rendered by such family members. Such a view was taken by Hon`ble Supreme Court in **Smt. Badami [Deceased] her L.R Vs. Bhali, 2012 AIR SC [Civil] 1974** and the Hon`ble Apex Court relied upon an its earlier decision in **Ram Charan Das Vs. Girija Nandini Devi, 1965 (3) SCR 841**, wherein it was held that the word “family” in the context of the family arrangement is not to be understood in a narrow sense of being a group of persons who are recognized in law as having a right of succession or having a claim to a share in the property in dispute. In **Kale and others v. Deputy Director of Consolidation and others, AIR 1976 SC 809**, it has been held that the object of the arrangement is to protect family from filing long drawn litigation or perpetual strifes which damage the unity and solidarity of the family and create hatred and bad blood between the various members of the family. What could be the binding effect and essentials for a family settlement were expressed thus:-

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“10. In other words to put the binding effect and the essentials of a family settlement in a concretized form, the matter may be reduced into the form of the following propositions:

- (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;
- (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;
- (3) The family arrangements may be even oral in which case no registration is necessary;

12. In **Maturi Pullaiah v. Maturi Narasimham**, AIR 1966 SC 1836

the Hon`ble Apex Court held that although conflict of legal claims *in praesenti or in futuro* is generally a condition for the validity of family arrangements, it is not necessarily so. Even bona fide disputes present or possible, which may not involve legal claims would be sufficient. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an agreement is entered into bona fide and the terms thereto are fair in the circumstances of a particular case, the Courts would more readily give assent to such an agreement than to avoid it. That way, defendant No. 2 had got passed consent decree in favour of defendant No.1, who was none else, but his real brother's son and had been serving defendant No.2 during his life time. The plaintiff, who is daughter of defendant No.2, had been living separately with her husband. There is no bar for defendant No.2 not to transfer his rights in the joint Hindu property in favour of close

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family friends with his free consent and that has been done in the present case and both the Courts below have already recorded findings in this behalf and the said findings do not call for any interference.

13. As regards to registration of decree under Section 17 of the Registration Act, 1908, the matter was before Hon`ble Supreme Court in **Bachan Singh Vs. Kartar Singh and others, 2002 (3) R.C.R. [Civil] 495** and the Hon`ble Apex Court observed that consent decree passed by the Court declaring a party owner of the land, does not require registration. To that effect, the concurrent findings have been recorded by both the Courts below on the basis of facts and evidence available on the file and there are no ground to interfere and set aside the said findings. More so, the appellant being daughter of defendant No.2, in the light of the fact that the decree was passed on 31.07.1995 i.e., before coming into force Act No. 39 of 2005, has no locus-standi to challenge the said decree and the both Courts below have rightly dismissed the suit of the plaintiff-appellant. In view of the above, all the points posed above are answered in favour of the respondents and against the appellant.

14. In view of the above, the present Regular Second Appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

April 26th, 2016
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