

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

RSA No.427 of 1988 (O&M)
Date of decision:16.11.2016

Khazani (deceased through LRs)

... Appellant

Vs.

Ram Kishan

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.K.Gupta, Advocate
for the appellant.

Mr. Amit Jain, Advocate
for the respondent.

Amit Rawal, J.(Oral)

The appellant-plaintiff is aggrieved by the judgment and decree dated 28.10.1987 passed by the Lower Appellate Court whereby the judgment and decree passed by the trial court was upheld. The appellant-plaintiff filed civil suit with a prayer for possession of the land situated in village Karhans, Tehsil Panipat on the basis of Will dated 06.12.1974 or in the alternative under Hindu Succession Act and also sought setting aside of the judgment and decree dated 05.02.1975 suffered in favour of respondent-defendant be declared as null and void.

Learned counsel appearing on behalf of the appellant-plaintiff submits that Ramji Lal had two sons namely Roop Chand and Kanhiya. Roop Chand had one daughter Khazani – appellant and Kanhiya had two sons namely Prit Singh etc. Roop Chand had suffered a decree on 05.02.1975 in favour of Ram Kishan. In fact Ram Kishan instituted a suit

accepting the family settlement alleged to have been settled earlier point of time. The aforementioned judgment and decree was challenged by the appellant-plaintiff by filing civil suit in the year 1976 but the same was dismissed on 17.11.1978 on the ground of locus standi whereas, all issues were rendered in favour of respondent-defendant.

Roop Chand at the instance of Khazani, filed a civil suit by challenging the judgment and decree dated 05.02.1975 but the same was dismissed as withdrawn on 19.11.1981 with liberty to file fresh one as Roop Chand died on 15.08.1981. The present suit bearing No.79 of 1982 had been filed by appellant-plaintiff on 09.02.1982 however, Roop Chand executed a Will dated 06.12.1974 in favour of the appellant-plaintiff. The ground of challenge in the suit was that the decree dated 05.02.1975 was obtained by fraud and could not have been obtained. The trial Court and the lower appellate Court have erred in jurisdiction by dismissing the suit on other issues. There was no family settlement much less Ram Kishan was not a member of the family of Roop Chand. Khazani was the only daughter left by her father as natural succession. The separate suit was maintainable in the eyes of law as per provision of Order 23 Rule 3 CPC, registration could not be pressed into service as decree dated 05.02.1975 was not on the basis of compromise. In support of his contention he has placed reliance upon the judgment of Hon'ble Supreme Court in ***Bhoop Singh vs. Ram Singh Major and others, AIR 1996 SC/196, K.Raghunandan & ors. vs. Ali Hussain Sabir & ors., 2008(3) RCR (Civil) 699 and Ajay Chaudhary vs. Santosh Kumar & anr., 2004(1) RCR (Civil) 807*** to contend that once right is created, it required registration.

Per contra, learned counsel for the respondent-defendant submits that as per averment of suit, there is no challenge to the family settlement. He has drawn the attention of this Court to the pleadings, where the plaint for challenging the decree dated 05.02.1975 was filed by Roop Chand. The Will dated 06.12.1974 viz-a-viz the property could not have been executed as Roop Chand was not the owner thereof. Even no Court fee qua declaration had been paid and hence the suit for possession had been dismissed, as the provision under Order 6 Rule 12 was not complied with. In the previous suit filed by Roop Chand, after his death the appellant-plaintiff moved an application for impleading his LRs but the same remained undecided and question remained opened till now. The appellant-plaintiff was required to move an application for LRs in the previous suit as per law. He further submits that said suit seeking the non-registration is not valid and law and can be decided as per ratio of judgments passed by Hon'ble Supreme Court in ***Pushpa Devi Bhagat (D) th. LR. Smt. Sadhna Rai vs. Rajinder Singh & ors., 2006(3) RCR (Civil) 480*** as well as Division Bench Judgment of this Court in ***Gurdev Kaur & anr. vs. Mehar Singh & ors., Vol. XCVII-(1990-1) PLR 334.***

I have heard learned counsel for the parties and appraised the judgments and decrees of both the Courts below and as well record of the Courts below and of the view that there is no merit in the case of the appellant-plaintiff. For the sake of justification, para No.11 and 12 of the plaint are extracted hereinbelow:

“11. That the value of the suit for the purposes of Court fee is Rs.70/- which has been affixed upon the plaint according to the

Haryana Amended Court Fee Act upto date and the value of the suit for the purposes of Court Jurisdiction is Rs.831/30 P which is 30 times of the annual land revenue assessed upon the suit land.

12. That it is therefore prayed that a decree for possession of the suit land fully mentioned in the head note of the plaint situated in village Karhans Tehsil Panipat on the basis of Will duly executed on 06.12.1974 or in the alternative under Hindu Succession Act and the judgment and decree dated 05.02.1975 of the said land in favour of the defendant by Roop Chand deceased is null, void, ab initio and not binding upon the rights of the plaintiff in any way be passed in favour of the plaintiff against the defendant with costs. Any other relief which the Court deems proper may also be awarded.”

The appellant-plaintiff filed a suit seeking the possession of the suit land by challenging the judgment and decree dated 05.02.1975 but did seek relief of declaration.

Be that as it may, the provision of Order 6 Rule 4 is not applicable as no evidence in this regard has been led by the appellant. Even no family settlement was pressed or any issue framed. No challenge to the family settlement had been sought for. The previous decree dated 05.02.1975 mentions about the oral family settlement and therefore, right was not created for the first time, therefore, would not require registration. Even otherwise, Roop Chand had suffered a decree in favour of the respondent-defendant and therefore, an appeal would not be maintainable in view of judgment passed in ***Pushpa Devi Bhagat (D) th. LR. Smt. Sadhna Rai's case(supra)*** as well as the judgment rendered in ***Gurdev Kaur's case(supra)***. As per ***Gurdev Kaur's case(supra)***, the question which came for

debate was on the basis of compromise. Certain other properties were also included. Subject matter of the property was not part of the compromise, therefore, judgment and decree was set aside. There was a reference with regard to the registration of the decree. As regards the findings rendered by a Coordinate Bench of this Court, the facts reveal that the same based on assertion of facts and not on law. The facts noted above would reveal that since the decree is of 05.02.1975 and the present appeal is of 1988 much water has flown. It would be too late now to put clock back in setting aside the decree dated 05.02.1975. Even when Khazani – present appellant instituted the present suit it was incumbent upon the Court below to decline the relief sought for.

For the reasons aforementioned, there is no ground to interfere in the judgment and decree passed by the Courts below.

Resultantly, the Regular Second Appeal stands dismissed.

(AMIT RAWAL)
JUDGE

16.11.2016
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1. Whether Speaking/Reasoned?
2. Whether Reportable?

Yes/No
Yes/No