

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

**Regular Second Appeal No.720 of 1988 (O&M)  
Date of Decision: April 28, 2016.**

Kewal Singh (Deceased) through LRs

.....**APPELLANT(s).**

**VERSUS**

Karnail Singh (Deceased) through LRs and others

.....**RESPONDENT(s).**

**CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. R.K. Verma, Advocate  
for the appellant (s).

Mr. R.S. Bains, Advocate  
for the respondents No.1 and 2.

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**SURINDER GUPTA, J.**

This is appeal against the judgment and decree passed by learned Additional District Judge, Sirsa, whereby the appeal against the judgment and decree passed by then Sub Judge II Class, Sirsa was accepted and the suit of the respondents-plaintiffs (since deceased) now represented through legal representatives, was decreed for declaration that they and defendant No.2 Sadhu Singh are owners in possession in equal shares of the land measuring 29 kanals 15 marlas situated in village Raghuana, Tehsil and District Sirsa (being 1/4<sup>th</sup> share of total land measuring 116 kanals 6 marlas) as fully detailed in head note of the plaint. The judgment and decree dated 16.05.1981 passed in civil suit No.598-C instituted on 08.05.1981 titled as “*Kewal Singh Vs. Samman Kaur*” and consequent mutation No.2549 were also declared as illegal, null and void and not binding on the rights of the plaintiffs. The defendants were also restrained from interfering in the

possession over the share of plaintiffs in the suit land.

2. The land in suit measuring 29 kanals 15 marlas was owned by Samman Kaur alias Samma Kaur wife of Boor Singh. Plaintiffs No.1, 2 and defendant No.2 Sadhu Singh are sons of Samma Kaur and Boor Singh. Kewal Singh, defendant No.1 is the grand son of Samma Kaur. A civil suit No.598-C was filed by Kewal Singh against Samma Kaur on 08.05.1981 seeking declaration that he is owner in possession of 1/4<sup>th</sup> share of land measuring 116 kanals 6 marlas owned by Samma Kaur. It appears that during the pendency of the above case, a joint application was filed by counsel for the plaintiff and one Shri H.S. Yadav, Advocate along with written statement of Samma Kaur on 16.05.1981 and learned Sub Judge decreed the suit filed by Kewal Singh with the order as follows:-

“Written statement filed. It is that of admission. In view of admission, the parties are not at issue. As such, the suit of the plaintiff is decreed, as prayed for, leaving the parties to bear their own costs. A decree-sheet be prepared and the file be consigned to the record room.”

3. The plaintiffs challenged the above judgment and decree with averments in para 4 of the plaint as follows:-

“4. That the aforesaid decree is null, void and nonest and was obtained fraudulently, and is liable to be declared as such and not binding upon the plaintiff for the reasons inter-alia:-

a) That Samma Kaur was over 90 years old when the decree aforesaid is said to have been passed. She was incapable of making any decision. She was feeble minded and used to remain confined to the bed.

b) That she was blind since several years and had to be physically carried or supported by two persons

on either side even if she had to be removed for a small distance.

c) That she did not come to the court for attending the said case.

d) That she did not engage any lawyer for drafting and making the admission statement in the aforesaid case in which the impugned decree is passed on her alleged statement. It appears that defendant no.1 and 2 in collusion with each other and in order to grab the share of the plaintiffs in the suit land owned by her have concocted the story of family settlement as alleged in that suit culminating in the impugned decree.

e) That the alleged thumb impression on the vakalatnama or on the written statement or application alleged to have been moved for advance taking of the case are not that of Samma Kaur or they were obtained by the defendant without the knowledge of Samma Kaur in the village Raghuana.

f) That Samma Kaur used to reside some times with the plaintiffs and some time with defendant no.2 and there was no occasion for giving her land to the defendant no.1 alone-her grand son.

g) That if Samma Kaur had appeared in the court, no court would have passed the said decree because she was blind and unable to make a statement and from her very appearance looked to be incapable of making any statement.

h) That the matter of such suit having been filed and decree obtained was kept secret from the plaintiffs till her death and ceremonies and feasts connected therewith.”

4. In the written statement, defendants denied all the averments of the plaintiffs and alleged that the decree was suffered by Samma Kaur of her sweet will, consent and in a disposing mind.

5. Learned Sub Judge while dismissing the suit discarded all the plea raised by the plaintiffs challenging the decree suffered by Samma Kaur. However, learned first Appellate Court in appeal accepted the plea of plaintiffs and held that the written statement in the civil suit filed by Kewal Singh is not proved to have been filed by Samman Kaur @ Samma Kaur. The counsel who filed her written statement, was not knowing her, as such, the identity of the person who filed the written statement, was not proved. Secondly, the defendant has not produced any evidence to prove that the written statement filed in civil suit No.598-C of 1981 was bearing thumb impression of Samma Kaur. Thirdly, Samma Kaur never appeared in the Court at any point of time. Only two counsel colluded and obtained the decree. Fourthly, Kewal Singh had no pre-existing right in the land of Samma Kaur during the life time of his father Sadhu Singh, therefore, decree dated 16.05.1981 conveys no title in favour of Kewal Singh, without being registered.

6. I have heard learned counsel for the parties and perused the paper book and lower Court record with their assistance.

7. Learned counsel for the appellant has argued that in order to prove that the decree dated 16.05.1981 was suffered by Samma Kaur, defendant Kewal Singh himself appeared as DW1 and has also examined Bhag Singh DW2, Lalaji DW3, Advocate Hardev Singh Yadav as DW4, to prove that the decree dated 16.05.1981 was suffered by Samma Kaur. PW4 Shri Hardev Singh, Advocate has stated that he was engaged by Samma Kaur and on her instructions, written statement was filed by him. The Court had relied on the admission of the defendant Samma Kaur, as such, has committed no error of law while decreeing the suit. Learned trial Court

rightly held that the plaintiffs had failed to prove the plea taken by them and the first Appellate Court has accepted the appeal on flimsy grounds holding that the identity of the lady who filed the written statement, is not proved.

8. On perusal of the lower Court record, I find that the first Appellate Court has committed no error of fact or law while reaching the conclusion that the decree dated 16.05.1981 passed in civil suit No.598-C of 1981, is not proved to have been suffered by Samma Kaur. The following facts that have come on record, support the above conclusion drawn by the first Appellate Court:-

(i) The suit was filed by Kewal Singh on 08.05.1981. It appears that some date was fixed in that suit but on 16.05.1981 i.e, after 8 days of filing of the suit, a joint application was moved on behalf of counsel for the appellant Kewal Singh and one Shri H.S. Yadav, Advocate for Samma Kaur, on which the file was taken up. On the same day, written statement was filed and the suit was decreed. This shows that Samma Kaur never appeared before the Court to make any statement.

(ii) It is admitted that Samma Kaur was a very old lady of 80-90 years. The statement of Kewal Singh that she came of her own to engage a lawyer appears to be not believable. From the statement of Kewal Singh, it appears that some statement of Samma Kaur was recorded and before 15 days of that statement, she had engaged a counsel. He has stated that her statement was recorded in the Court on which she had thumb marked and her counsel had identified her. The entire statement of Kewal Singh defendant No.1 (now appellant) appears to be a bundle of lies as neither Samma Kaur appeared in the Court nor her statement was recorded by the Court. He has further stated that she appeared 15 days after filing of the suit, while the

application dated 16.05.1981 was moved after 8 days of filing of the suit and the suit was decreed on the same day.

(iii) Samma Kaur was represented in the Court by Hardev Singh Yadav, Advocate, who while appearing as DW4 stated that he was not knowing Samma Kaur personally. He had not appeared in any other case on behalf of Samma Kaur prior or after this suit. This statement of Hardev Singh Advocate create doubt about the identity of the lady as Samma Kaur, who engaged him and filed written statement in the civil suit filed by Kewal Singh. Onus was on appellant-defendant No.1 to prove that the written statement in suit filed by him was bearing the thumb impression of Samma Kaur, but he failed to get her thumb impression compared with any admitted thumb impression of Samma Kaur.

(iv) The appellant appeared to be in hurry to get the decree and this is why his counsel along with Shri Hardev Singh Yadav, Advocate moved the application on which file was taken up and the suit was decreed within eight(8) days of its filing.

9. This has rightly given space for suspicion to the first Appellate Court that on the date i.e. 16.05.1981 Samma Kaur had not appeared herself in the Court and that some other lady might have thumb marked the written statement filed by Shri H.S. Yadav, whose age as per Shri H.S. Yadav, Advocate was about 70 years, while as per the statement of appellant-defendant No.1, Samma Kaur was 80-90 years of age at that time.

10. Appellant-defendant No.1 Kewal Singh was quite emphatic while stating as DW1 that Samma Kaur had engaged counsel before his filing the suit but he had not accompanied her and she had come alone. This makes entire matter and sequence of events very doubtful that Samma Kaur

had come to the Court, engaged a counsel, even before filing the suit by Kewal Singh. It is highly improbable that on 16.05.1981 she moved an application but did not appear before the Court in person to make statement that she admit the claim of appellant Kewal Singh. The first Appellate Court has rightly taken into account all these facts while concluding that the judgment and decree dated 16.05.1981 passed on the written statement, admitting the claim of plaintiff is not legal and valid as Samma Kaur, is not proved to have either filed this written statement or it bears her thumb impressions. The finding of fact recorded by the first Appellate Court, call for no interference by this Court.

11. In view of the observations of Hon'ble Apex Court in cases of *Phool Patti and another Vs. Ram Singh (Dead) through LRs and another 2015(2) SCC (Civil) 248; K. Raghunandan & Ors Vs. Ali Hussain Sabir & Ors 2008(3) R.C.R. (Civil) 699*; the consent decree creating right for the first time, without registration confers no right in favour of decree-holder. Kewal Singh had no pre-existing right in the property of Samma Kaur during the life time of his father Sadhu Singh and first Appellate Court has rightly observed that the impugned decree is bad on this score as well.

12. No substantial question of law requiring determination arises in this appeal, which has no merits.

13. Dismissed.

April 28, 2016.  
Sachin M.

( SURINDER GUPTA )  
JUDGE