

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

**RSA No.1084 of 1999
Date of decision : 27.10.2016**

Smt. Bohti & Others

..... Appellants

Versus

Smt. Bhateri & Others

..... Respondents

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

Argued by : Mr. C.B. Goel, Advocate
for the appellants.

Mr. Amit Jain, Advocate
for the respondents.

GURMIT RAM, J.

The abovesaid appeal has been preferred by the appellants-
herein Smt. Bohti and others (plaintiffs) against judgment and decree dated
11.03.1999 passed by the Court of learned Additional District Judge,
Gurgaon vide which appeal of respondents-herein (defendants) was
accepted, the finding recorded by the learned trial Court on issue No.5 was
set aside and plaintiffs' suit for declaration was dismissed leaving the parties
to bear their own costs.

2. The case of the appellants-herein (plaintiffs) before the learned
trial Court in brief was that the plaintiffs and defendants No.1 to 5 were the

co-sharers/owners in joint possession of the agricultural land in dispute measuring 159 kanals 13 marlas situated in the revenue estate of village Birhera, Tehsil and District Gurgaon along with the house and the *Nohra* as fully detailed and described in para No.1 of the plaint. In the said suit property, plaintiffs No.1 and 2; defendants No.1, 2, 3 and 4 were having one share each, whereas plaintiff No.3 and defendant No.5 both were having one share in this property. It was also the case of plaintiffs that defendant No.1, the father of plaintiffs No.1, 2 and defendants No.2 to 4 and Smt. Ghogri (since deceased) was the owner in possession of the suit property which was stated to be ancestral one. Plaintiff No.3 and defendant No.5 were stated to be son and daughter of said Smt. Ghogri (since deceased) who died about more than 30 years ago. Defendant No.1 was having neither son nor any near collateral having right to inherit the suit property in preference to the plaintiffs and defendants No.2 to 5. All the daughters of defendant No.1 had right/interest in the suit land, which even was to be inherited by them equally after the death of defendant No.1 under the law. It was further plea of the plaintiffs that defendant No.1 in order to avoid any dispute amongst his heirs qua the suit land after his death distributed the same equally by way of family settlement in the year 1980 amongst the plaintiffs and defendants no.2 to 5 as per their shares aforementioned and retained 1/7th share for self in this land, besides, the share in *Dholidari* land. Since the date of this family settlement, plaintiffs as well as defendants No.2 to 5 were in cultivating joint possession of the suit land and other property as per their abovesaid respective shares.

Then it was also plea of the plaintiffs that recently they came to know that defendant No.1 had suffered collusive decrees in favour of

defendants as described below:-

- i. He suffered collusive decree dated 22.03.1982 Ex.P3 whereby transferring his land measuring 48 kanals 8 marlas in favour of defendant No.4;
- ii. he also suffered a collusive decree dated 19.03.1984 Ex.P6 in respect of his land measuring 48 kanals 1 marla in favour of defendants No.2 and 3;
- iii. and further he suffered another collusive decree dated 22.08.1986 Ex.P4 in respect of his land measuring 61 kanals including *Dholidari* land as fully detailed and described in para No.4 of the plaint in favour of defendants No.6 to 8.

The abovesaid decrees were alleged to be illegal, void, without jurisdiction as well as result of a fraud and misrepresentation played by defendants No.2 to 4 and defendants No.6 to 8 on defendant No.1 as also on the Court. Further the suit land could not be transferred without registered sale deed since its value was in lacs. Resultantly, these decrees were stated to be not binding on the plaintiffs and defendant No.5 and liable to be set aside. Then it was also pleaded that defendant No.1 was of about 85 years of age with weak memory, eye sight and also unable to understand his good and bad. Then it was also pleaded that since the suit land in the hands of defendant No.1 was the ancestral one, so as such he was not competent to transfer or alienate the same to the defendants without legal necessity and consideration. The parties were governed by an agricultural custom in the matters of alienation and succession. Since the defendants refused to admit the claim of the plaintiffs in the suit land, hence was the instant suit.

3. In joint written statement to the amended plaint, defendants

No.2 to 4 and defendants No.6 to 8 took preliminary objections that plaintiffs had no locus standi to file this suit; that suit is barred by limitation; that suit is bad for mis-joinder of causes of action; that plaintiffs were estopped to file this suit by their own act and conduct; that suit land qua the plaintiffs being not ancestral one and as such they have no right to file this suit; that suit in the present form was not maintainable and that it was also not properly valued for the purpose of Court fee and jurisdiction.

On merits, it was admitted that that defendant No.1 was the owner in possession of the land in dispute, who was having no son. Then it was denied that plaintiffs were the co-sharers / owners in the land in dispute or were in its joint possession. In this connection, it was also submitted that defendant No.4 was the owner in possession of the agricultural land measuring 48 kanals 8 marlas, defendant No.2 and 3 were the owners of land measuring 48 kanals 1 marla and defendants No.6 to 8 were the owners of land measuring 64 kanals, whereas defendant No.1 was the owner of the remaining land as mentioned in Para No.1 of the written statement on merits. It was also denied that suit land in the hands of defendant No.1 was ancestral one or that any of the plaintiffs or defendant No.5 had been serving this defendant. In this connection, it was specific plea of the defendants that defendants No.6 to 8 were living with defendant No.1 along with their mother(defendant No.4) and Smt. Chima (defendant No.3), who were serving him like his sons. Defendant No.1 was the full fledged owner of the suit land and he was empowered to give this land to any person. Collusive decrees as mentioned in the plaint were stated to be suffered by defendant No.1 out of his free will and without any kind of pressure. These decrees were also stated to be legal and fully binding on all

the concerned. The right of the plaintiffs to challenge these decrees was also denied. It was also denied that any family settlement qua the land in dispute took place in the year 1980 as alleged in plaint. Rest of the averments of the plaint were also denied.

4. From the pleadings of the parties, following issues were framed by learned trial Court on 17.11.1988:-

1. Whether the civil Court decrees in cases Vidya vs. Gopi Ram dated 22.03.1982, Smt. Chima etc. vs. Gopi Ram dated 19.03.1984 and Rajinder Singh etc. vs. Gopi Ram dated 22.08.1986 are illegal, void and without jurisdiction as alleged? OPP

2. Whether mutation sanctioned on the basis of the said decrees are also illegal as alleged? OPP

3. Whether the suit is barred by limitation? OPD

4. Whether the plaintiffs are estopped from filing the suit by their own act, conduct and acquiescence? OPD

5. Whether the suit is not maintainable in the present form? OPD

6. Whether the suit is bad for non-joinder of causes of action?
OPD

7. Whether the suit has not been properly valued for the purposes of Court fee and jurisdiction, if so, what its valuation? OPD

8. Relief.

Then following additional issues were framed on the amended pleadings of parties on 11.09.1991:-

1(a) Whether the parties are governed by an agricultural custom in matter of alienation and succession? If so, to what effect? OPP

1(b) Whether the suit land is ancestral land in the hands of defendant

No.1? If so, to what effect? OPP

5. The learned trial Court recorded findings on issues No.1 to 7 in favour of the plaintiffs and decreed the suit of the plaintiffs with no order as to costs without recording any finding on abovesaid additional issues No.1(a) and 1(b) vide judgment and decree dated 19.01.1996.

6. Respondents-herein (defendants) being aggrieved from this judgment and decree passed by the learned trial Court preferred an appeal which was accepted by the learned Additional District Judge, Gurgaon while setting aside the finding of learned trial Court recorded on issue No.5 and dismissed the suit of the plaintiffs vide judgment and decree dated 11.03.1999.

7. Appellants-herein (plaintiffs) feeling aggrieved from the abovesaid judgment and decree of the learned Additional District Judge, Gurgaon preferred the instant appeal before this Court, notice of which was given to the respondents-herein (defendants). Record of learned both the Courts below was also requisitioned.

8. Counsel for both the parties were heard. Record was also perused with their able assistance.

9. In this case some of the admitted facts are that defendant No.1 – Gopi Ram (since deceased) was the owner in possession of the property in dispute. He had six daughters i.e. plaintiffs No.1 and 2, defendants No.2 to 4 and Smt.Ghogri (since deceased) who predeceased him i.e. defendant No.1. Plaintiff No.3 – Om Parkash and defendant No.5 Sona Devi are son and daughter, respectively of said Smt. Ghogri. Defendants No.6 to 8 are the sons of defendant No.4 – Smt. Vidya. It is also admitted that all the said daughters of defendant No.1 are married and settled in their respective in-

laws' houses. Though it was also the plea of defendants that defendant No.4 - Smt. Vidya along with her children i.e. defendants No.6 to 8 and defendant No.3 Smt. Chima, another daughter of Gopi Ram had been residing with defendant No.1 and looking after him to all the intents and purposes. Then it is also admitted that defendant No.1 – Gopi Ram died during the pendency of the suit.

10. The plea of the appellants – herein (plaintiffs) that the alleged collusive judgment and decree Ex.P2 and Ex.P3 respectively dated 22.3.1982 suffered in favour of respondent No.3 – herein (defendant No.4), collusive judgment and decree Ex.P4 and Ex.P5 respectively dated 22.8.1986 suffered in favour of respondents No.4 to 6 – herein (defendants No.6 to 8) and collusive judgment Ex.P7 and decree Ex.P6 dated 19.3.1984 respectively suffered in favour of respondents No.1 and 2 – herein (defendants No.2 and 3) by defendant No.1 – Gopi Ram were void, illegal etc. being the result of fraud, misrepresentation etc. played upon defendant No.1 as also on the Court, was declined by both the Courts below.

It is an admitted fact that this suit was instituted originally during the life time of Gopi Ram and he was impleaded as defendant No.1 in this suit. He joined hands with defendants No.2 to 4 and 6 to 8 to contest the suit and filed the joint written statement along with these defendants denying the fact that the above-said judgments and decrees Ex.P2 to Ex.P7 were the result of any fraud etc. being played upon him by these defendants. At the time of filing written statement to amended plaint, he could not join with above-said defendants in doing so for the reason that by that time, he expired. It is a settled law that a person who had suffered the alleged decree against his interest is authorized to challenge the same on the plea that it was

obtained from him by the beneficiary of the decree by playing fraud etc. upon him by said beneficiary. So the above findings recorded by both the Courts below qua judgments and decrees Ex.P2 to Ex.P7 impugned in this suit that these are not the result of any fraud, misrepresentation etc. etc. are held to be correct since there is nothing on the file to reopen this issue and to set aside the above findings for recording any other finding contrary to it.

11. The next question which survives for discussion for the adjudication of the appeal in hand is as to whether registration of the above-said decrees Ex.P3, Ex.P5 and Ex.P6 was required or not as prescribed under the provisions of Indian Registration Act, 1908 (hereinafter referred to as 'the Act of 1908'). Herein the learned counsel for the appellants has contended that vide these decrees, the right, title or interest in favour of defendants No.2 to 4 and 6 to 8 (respondents No.1 to 3 and 4 to 6 – herein) qua the land in dispute was created for the first time since these defendants (respondents) did not have any pre-existing right, interest or title in this property prior to these decrees. These decrees were not in the nature of a declaration to recognize the pre-existing right of any person in the land in dispute. In order to elaborate his contention, he further submits that in fact vide these decrees defendant No.1 transferred his ownership right in the land in dispute in favour of aforementioned defendants (respondents) as like a transfer document such as gift deed, sale deed etc. etc. and that for this reason, the registration of these decrees as prescribed under the provisions of Section 17 of the Act of 1908 was required in order to make them legally permissible documents and also for the reason as above mentioned that these defendants (respondents) did not have any pre-existing right in the land in dispute on the dates when these decrees were suffered by defendant No.1 –

Gopi Ram in their favour. Further, it is an admitted case of both the parties that defendant No.1 was a sonless male having six daughters who all were married and settled with their families in their respective in-laws' houses. The plea of defendants that defendant Nos.6 to 8 along with defendant Nos.3 and 4 had been residing with defendant No.1 during his life time has not been substantiated on record since no evidence in the shape of ration card, voter lists etc. was produced by them to support this plea. It is also contended that the findings recorded by both the Courts below that registration of above-said decrees in question was legally required for their implementation in the revenue record are the correct one and the same are liable to be affirmed. In support of his above contention, the learned counsel for the appellants has referred to certain case laws as discussed below:

(i) **Bhoop Singh Versus Ram Singh Major, 1995(2) HLR 432.**

In this case law, the Hon'ble Apex Court after discussing the matter with regard to registration as well as non-registration of the collusive decrees and the law laid down in various case laws earlier by the High Courts as well as by the Hon'ble Apex Court in brief, held in para No.18 of this case law as under:

The legal position qua clause (vi) of Section 17(2) can, on the basis of the aforesaid discussion, be summarised as below :

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs.100/- or upwards in favour of any party to the suit, the decree or order would require registration.

(3) *If the decree were not to attract any of the Clauses of sub-section (1) of [section 17](#), as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.*

(4) *If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of compromise in question.*

(5) *If the property dealt with by the decree be not the "subject matter of the suit or proceeding", Clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated.*

(ii) **Smt.Sheela Wati Versus Smt. Chand Kaur and others, 1996 HRR 584.**

The principles laid down in *Bhoop Singh's* case cited supra were followed in this case law. It was also held that there is no question of any family settlement because on the marriage, the daughter would belong to some other family. Simply because a daughter was staying with her father would not make her as the member of the family of her father because the term “family” as understood in the Hindu Law will have to be distinguished from the term “family” as is understood in general parlance wherein a person staying in the family is termed as a member of the family.

(iii) **Phool Patti and another Versus Ram Singh (Dead) through LRs and another, 2015(1) RCR(Civil) 606.**

In this case law, it came on record that 32 kanals of land were ancestral property whereas 20 kanals land was self acquired property of the person whose inheritance was in dispute. It was held that decree suffered in respect of above-said ancestral land did not require any registration, whereas the decree suffered in respect of abovesaid self acquired land on the basis of

gift deed required registration compulsorily.

(iv) **Teja Singh Versus Jarnail Kaur and another, 2015(3) Law Herald 1990.**

In this case law reference was made to an earlier authority of this Court delivered in Raghbir Singh Versus Sri Chand 1984 P.L.J. 562 wherein it was held that the compromise decree remains essentially a contract between the parties with the seal of the Court superimposed thereon and it can be challenged on all grounds on which the contract can be vitiated. A consent decree can be challenged not only on the grounds available under the [Indian Contract Act](#), 1872 (for short "the Act of 1872") such as, fraud, mistake or misrepresentation but also on any of the grounds available under any other law which prohibits such a contract or declares it to be ineffective so far as transfer of any rights in immovable property are concerned. If the consent decree has the effect of transferring the land without a registered deed, which required compulsory registration, the decree will be null and void.

While reverting to this case law, it was held that since the value of the suit land was more than L 100/-, in case Kaur Singh wanted to transfer the same to his son Teja Singh, he could do so only by executing a registered deed. It was only to save registration fee etc. that he was made to suffer the decree dated 30.04.1982. Since the said decree was against public policy and against the provisions of the Act of 1908, it was, in the fact in hand, incompetent for creating a title in favour of Teja Singh or for adversely affecting the rights of Kaur Singh.

12. But on the other hand, the learned counsel for the respondents has denied the above entire contentions of learned counsel for the appellants,

which were averse to the interest of the respondents – herein (defendants), very strongly and has contended that the registration of the decrees in question was not at all legally required for their implementation under the law and hence findings recorded by both the Court below qua this fact are liable to be set aside being not sustainable in the eyes of law. Herein, he contends that it was not proved on record that the alleged land in dispute in the hands of defendant No.1 was ancestral one and as such this property in his hands was his non-ancestral/self acquired property. Meaning thereby, that he was absolute owner of this property and hence fully competent to transfer the same in any manner in favour of any person he likes without any clog in his said competency. He has also argued that decrees in question Ex.P3, Ex.P5 and Ex.P6 were suffered by defendant No.1 in favour of aforementioned respondents (defendants) on the basis of some family settlement/arrangement in order to promote harmony amongst the members of family and further to avoid any legal complication amongst them in future qua this property and hence these decrees are beyond the scope of the provisions of Section 17 of the Act of 1908 which make certain deeds of transfer compulsorily registrable on payment of stamp duties etc. etc. in order to make the same admissible in the eyes of law. Further, he submits that appellants – herein (plaintiffs) did not have any right in the land in dispute owned by defendant No.1 during his life time since he was its absolute owner and the same also being not ancestral property in his hands and on this count also, their claim qua this property is liable to be rejected. In order to fortify his above contention, he has also cited certain case laws as detailed below:

- (i) **Gurdev Kaur and another Versus Mehar Singh and ors., 1990(1) P.L.R. 334.**

This case law was discussed by the Hon'ble Apex Court while dealing with the matter in issue in **Bhoop Singh's** case cited supra and summed up the law on this point in its para No.18 as discussed above in para No.11 of this judgment.

- (ii) **Rajjo Versus Jawahar Singh, 2007(2) R.C.R.(Civil) 62.**

In this case law, the law laid down by the Hon'ble Apex Court in **Bhoop Singh's** case cited supra was not taken into consideration. It was briefly held in this case law that a person who has suffered a consent decree can challenge the same on the grounds of fraud etc. and not on the ground of its non-registration.

- (iii) **Bant Singh Versus Lakhbir Singh and others, 2005(2) P.L.R. 846.**

In this case law, it was held that registration of the compromise decree passed on the basis of family settlement is not necessary.

- (iv) **Hari Singh Versus Gurcharan Singh and others, 2003(3) P.L.R. 119.**

In para No.18 of this case law, it was observed as under:

In **Bhoop Singh's** case, the Hon'ble Apex Court had noted the law laid down in [Tek Bahadur v. Debi Singh](#), A.I.R, 1966 S.C. 292 and observed as follows:

"14. In [Tek Bahadur v. Debi Singh](#), A.I.R. 1966 S.C. 292, the Constitution Bench of this Court considered the validity of the family arrangement and the question was whether it requires to be compulsorily registered under Section 17. This Court, while

up-holding oral family arrangement, held that registration would be necessary only if the terms of the family arrangement are reduced into writing. A distinction should be made between the document containing the terms and recital of family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of record or for information of the Court for making necessary mutation. In such a case, the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of [Section 17\(2\)](#) of the Registration Act. It was held that a memorandum of family arrangement made earlier which was filed in the Court for its information was held not compulsorily registrable and therefore it can be used in evidence for collateral purpose, namely, for the proof of family arrangement which was final and binds the parties. The same view was reiterated in [Maturi Pullaiah v. Maturi Narshimham](#), A.I.R. 1966 S.C. 1836, wherein it was held that the family arrangement will need registration only if it creates any interest in immovable property in present time in favour of the parties mentioned therein. In case where no such interest is created the document will be valid, despite it being non-registered and will not be hit by [Section 17](#) of the Act."

(v) **Jagdish Versus Ram Karan, 2003(1) R.C.R.(Civil) 657.**

In nutshell, it was held in this case law that decree based on family settlement is not required to be compulsorily registered.

13. Now let us see the form of impugned decrees Ex.P3, Ex.P5 and Ex.P6 and corresponding judgments in order to find out as to whether the same (Exs.P3, P5 and P6) were required to be registered compulsorily or not in view of provisions of Section 17(2) of the Act of 1908 and the principles laid down in the case laws cited supra:-

(i) Decree (Ex.P3)

This decree was passed in pursuance to the judgment Ex.P2 which was as under:

“In the light of the admission written statement and the statement of defendant with counsel and that of counsel for the plaintiff, the suit is decreed with no order as to costs. The plaintiff is declared to be owner in possession of the suit land identified in para No.1 of the plaint. Decree-sheet be drawn up accordingly and file be consigned to record room.”

From the perusal of the judgment Ex.P2, it has been found that decree Ex.P3 was passed on the basis of the admission made by Gopi Ram – defendant in that suit in the written statement. There is no mention of any family settlement/compromise existing prior to the decree Ex.P3 between the parties to that suit. So the case laws as referred above by learned counsel for the respondents cannot be attracted to this decree for the reasons above mentioned i.e. this decree was simply passed on the admission of the defendant in his written statement and no family settlement was pleaded. So it created right for the first time qua the land mentioned in that suit in favour of Smt. Vidya plaintiff of that suit, now respondent No.3 in this appeal (defendant No.4 in the instant suit). Hence this decree in the light of the principles laid down in Bhoop Singh's case (supra) is required to be compulsorily registered under the provisions of Section 17(2) of the Act of 1908 for its implementation under the law. This decree without its registration is nothing, but mere a paper transaction.

(ii) Decree (Ex.P5)

This decree followed the judgment Ex.P4. In this judgment, reference was made to written compromise Ex.C1 and the admission of the

defendant made in the written statement. None of the parties brought on the record the said compromise Ex.C1 to know its nature and its terms and conditions. In the case in hand, it were respondent Nos.4 to 6 – herein (defendant Nos.6 to 8) who were the beneficiaries of this decree and hence they were bound to bring this document Ex.C1 on record, which they had failed to do. Then it is also to note that the said respondents No.4 to 6 were the sons of Smt. Vidya, one of the daughters of Gopi Ram – defendant No.1. On the date of the passing of this decree, they were not having any pre-existing right in the land in that suit. The interest, if any, they could claim qua this land was through their mother Smt. Vidya and not of their own prior to death of defendant No.1 – Gopi Ram. Right qua the land in that suit was created for the first time in their favour vide this decree and as such its registration was also compulsorily required to make it a legally permissible document.

(iii) Decree (Ex.P6)

This decree was followed on the basis of judgment Ex.P7 which was passed on the basis of some family settlement and out of love and affection between the parties to that suit.

Since it is held that the suit land in the hands of defendant No.1 was not ancestral one, so as such respondents No.1 and 2 – herein (defendant Nos.2 and 3) were also not having any pre-existing right in the land in dispute. Their right, if any, qua this land was to accrue on the death of their father Gopi Ram – defendant No.1. Since the right in their favour qua the land which was subject matter of suit in which decree Ex.P6 was passed was created in their favour for the first time vide this decree, so as such

registration of this decree was also legally required to be made for getting its benefit under the law.

14. Moreover, the purpose to recognize any family settlement if validly made between the parties concerned is to promote the harmony amongst the parties and further to avoid litigation in future qua the property in dispute amongst them. In the case in hand, vide the alleged family settlement, nothing in the shape of harmony amongst the parties concerned was achieved. Rather it gave rise to prolonged litigation amongst them which is pending since the year 1988.

15. Then it is also the settled law that a party can argue on the point in issue in any appeal without filing any cross-objection to that effect. Herein, the law as laid down by the Hon'ble Apex Court in **Ravinder Kumar Sharma Versus State of Assam and others, AIR 1999 Supreme Court 3571** is followed.

16. In the light of the above discussion, the plea of the learned counsel for the appellants that the registration of the impugned decrees was required compulsorily under the provisions of Section 17(2) of the Act of 1908 is held to be correct and as a result thereof, the above contention of learned counsel for the respondents is declined.

17. The next bone of contention between the parties is the Will Ex.DW5/1 dated 23.3.1988 stated to be executed by defendant No.1 – Gopi Ram in favour of his daughters Smt. Vidya (defendant No.4), Chima (defendant No.3) and maternal grand-children Rajinder Singh, Om Parkash and Bhagmal Singh (defendants No.6 to 8) of this suit. The learned First Appellate Court, Gurgaon after discussing the evidence led by defendants qua the execution of this Will came to the conclusion that this Will was

validly executed by defendant No.1 in favour of above-said defendants and set aside the findings recorded by learned trial Court on issue No.5. While deciding this issue in favour of respondents – herein (defendants), the said learned First Appellate Court accepted the appeal and dismissed the suit of the appellants – herein (plaintiffs) vide the impugned judgment and decree dated 11.3.1999.

18. The learned counsel for the appellants has contended that the findings recorded by the learned first Appellate Court on issue No.5 are palpably wrong as well as illegal for the reason that factum of this Will Ex.DW5/1 was never pleaded anywhere in the written statement filed by defendants nor there was any issue before the said Appellate Court to record any findings qua this Will. The entire amount of evidence recorded before the learned trial Court qua the execution of this Will has no leg to stand nor it could be taken into consideration for deciding the matter in issue betwixt the parties as the same being beyond the pleadings of the defendants. It is further his contention that it is the basic law that no body can be permitted to travel beyond his pleadings. In support of his above contention, the learned counsel for the appellants has also cited following case laws:

- (i) **State Bank of India and Ors. Versus S.N. Goyal, 2008(3) Recent Services Judgments 319.**

In this case law, there was no plea in the plaint that the order of removal was vitiated on account of the Appointing Authority consulting and acting on the advice of Chief Vigilance Officer of the Bank. Plaint also did not contain any allegation that the Appointing Authority had acted on extraneous material in passing the impugned order of removal from the service. Even no issue was framed in that regard. It was held that no amount

of evidence on a plea which was not put forward in the pleadings can be looked into. In the absence of necessary pleadings and issue, neither the trial Court nor the Appellate Court could have considered the contention and recorded a finding thereon.

(ii) **Bachhaj Nahar Versus Nilima Mandal & Anr., 2009(1) R.C.R.(Civil) 855.**

In this case law, it was held that the question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the Court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the Court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

For instance, in a suit for recovery of possession of property 'A' Court cannot grant possession of property 'B'.

(iii) **Improvement Trust Patiala through its Administrator/Chairman Versus Jaswinder Kaur, 2010(4) C.C.C. 534.**

In this case law, in the light of the provisions of Order 6, Rule 2 of CPC, it was laid down that no evidence beyond pleadings can be looked into.

19. But on the other hand, learned counsel for the respondents – herein (defendants) has contended that the appellants – herein (plaintiffs) became conversant with regard to the execution of above mentioned Will Ex.DW5/1 when respondents – herein (defendants) led evidence with regard

to its existence and execution and hence the learned first Appellate Court, Gurgaon is very much justified in recording findings qua this Will while deciding issue No.5 in the light of evidence led by defendants before the trial Court in this regard. It is further his contention that the appellants – herein (plaintiffs) did not challenge this Will anywhere either in this suit by amending the plaint or before any other forum till date. Further, in order to strengthen his contention, he has also referred to certain case laws as discussed below:

(i) **Ram Niwas and others Versus Rakesh Kumar and others, The Punjab Law Reporter, Vol.LXXIV – 1982 Page 9.**

In this case, the plaintiff instituted a suit for ejectment and for recovery of some amount by way of damages on the basis of his title i.e. sale deed. This suit was dismissed by the trial Court and the District Judge in appeal upheld the findings of trial Court and confirmed its decree. In a further appeal, the learned Single Judge held that an overall reading of the plaint showed that the suit was for possession on the basis of title and that even otherwise there was no bar to grant decree for possession on the basis of title as the plaintiff had made necessary averments in the plaint in that regard. Consequently, the appeal was accepted and suit of the plaintiff was decreed. Letters Patent Appeal filed against the judgment of learned Single Judge was dismissed.

(ii) **Swaran Singh Versus Devinder Singh and another, 2008(4) R.C.R.(Civil) 235.**

In this case, the plaintiff filed a suit for recovery of Rs.1,99,000/- as the damages and compensation for the injuries suffered by him in the alleged occurrence dated 19.8.1995. It was held that the stand of

the learned counsel for the appellant that undue weightage has been given to judgment Ex.P9 passed by the learned Additional Sessions Judge is devoid of any merit. The contention that in the absence of any issue regarding the alleged occurrence a serious prejudice has been caused to the defendants is also without basis. It may be noticed that both the parties have led evidence on the nature of injuries and also on the quantum of compensation. In **Kunju Kesavan Versus M.M. Philip and others, AIR 1964 SC 164**, it was held that where both the parties understanding what the issue in the case was, absence of issue would not lead to mis-trial sufficient to vitiate the decision. Therefore, both the parties being aware of the issues between the parties and the claim of the plaintiff, the mere fact that specific issue has not been framed with regard to the alleged occurrence is of no significance and has not resulted in any prejudice to the defendant – appellant.

In ***Ram Niwas's*** case (supra), it was clearly mentioned in the plaint that plaintiff was seeking the possession of the property in dispute on the basis of his title/sale deed, whereas in the case in hand, the respondents – herein (defendants) did not open their cards at any stage that they are seeking the ownership of the property in dispute on the basis of Will Ex.DW5/1. Then in ***Swaran Singh's*** case (supra), the suit was filed by the plaintiff for the recovery of some amount as the damages and compensation for the injuries caused to him in the alleged occurrence. Both the parties to the suit were well aware about this occurrence and as such there was no concealment or mis-statement of any material fact on the part of the plaintiffs of that case. So the principles laid down in both these case laws cannot be attracted to the case in hand as the facts of the same were on entirely different footings than the facts of the case in hand.

20. Learned counsel for the respondents – herein (defendants) has also contended that the appellants – herein (plaintiffs) did not raise any objection when the evidence with regard to the Will Ex.DW5/1 was recorded before the trial Court and as such now they are estopped from raising any objection qua this Will as well as the evidence relating to it by their own act and conduct. No doubt, the appellants – herein (plaintiffs) did not raise any objection with regard to this Will and the evidence produced before the trial Court to prove its execution, but at the same time it is the settled law that there can be no estoppel against the law. Law on this point is already discussed in Para No.18 of this judgment. Moreover, it was the duty of the counsel, who represented the case of the appellants – herein (plaintiffs) before the trial Court to raise that objection and if he failed to discharge his legal duty properly, then the appellants – herein (plaintiffs) are not to suffer for his lapse.

21. Then the learned counsel for the respondents – herein (defendants) has further argued that the respondents (defendants) could not take the plea of this Will in the written statement before the trial Court for the reason that defendant No.1 – Gopi Ram, the executant of this Will was alive, when the written statement in this suit was filed. It is true that said Gopi Ram was alive when this suit was filed and he was also alive when written statement to the plaint in this suit was initially filed on 23.5.1988. But during the pendency of the suit, the amendment in the plaint was sought which was allowed. As per the record, written statement to amended plaint was filed on 7.8.1991 on behalf of the defendant Nos.2 to 4 and 6 to 8. It is the admitted case of defendants that defendant No.1 – Gopi Ram had died when the written statement to the amended plaint was filed on 7.8.1991. So

as such there was an opportunity for the said defendants to take the plea of this Will in the written statement which was filed to the amended plaint on 7.8.1991, which they failed to do and as such this contention of learned counsel for the respondents – herein (defendants) is declined.

22. Now there is no controversy with regard to the fact that plea of alleged Will Ex.DW5/1 was never taken in the written statement by the defendants nor any issue to that effect was framed. Then it is also to note that the factum of this Will cannot be covered even impliedly under any of the issues framed by learned trial Court.

Issue No.5 as framed by the learned trial Court was as under:

*“Whether the suit is not maintainable in the present form?
OPD”*

From the form of this issue, it is difficult to hold that it has any kind of nexus with regard to the factum of Will either expressly or impliedly. Then as above discussed, there is no dispute with regard to the legal proposition that no amount of evidence can be taken into consideration regarding which neither there are any pleadings nor any issue. So as such the findings recorded by the learned first Appellate Court on issue No.5 whereby deciding this issue in favour of respondents – herein (defendants) are held to be not sustainable in the eyes of law and hence liable to be set aside.

23. Then as above discussed, defendant No.1 suffered judgments and decrees Ex.P2 to Ex.P7 in favour of the defendants except defendant No.5 prior to the execution of the alleged Will Ex.DW5/1. Later on, this Will was allegedly executed by defendant No.1 in favour of said defendants on dated 23.3.1988. This act and conduct on the part of these defendants

shows that their intention was nothing-else, but to usurp the entire property of defendant No.1 – Gopi Ram by hook or crook.

24. The plea of the learned counsel for the respondents – herein (defendants) that this suit was pre-mature one is also held to be not sustainable for the reason that no such plea was taken by the defendants in the written statement before the learned trial Court.

25. In the light of above discussion, it is held that there are merits in this appeal, so it stands accepted. Consequently, the impugned judgment and decree of the Appellate Court dated 11.3.1999 stand set aside. Resultantly, judgment and decree passed by the learned trial Court stand restored.

Copy of this judgment be sent to the quarter concerned for information and necessary compliance.

27.10.2016
Brij / Gaurav Sorot

(GURMIT RAM)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No