

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

RSA No.1684 of 2011 (O&M)

Date of Decision.22.09.2016

Raj Pal and others

.....Appellants

Vs

Smt. Chameli

.....Respondent

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. C.B. Goel, Advocate
Ms. Neeti Gupta, Advocate and
Mr. Rajesh Bansal, Advocate
for the appellants.

Mr. Arun Jain, Senior Advocate with
Mr. Kushagra Mahajan, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.

The appellants-defendants are aggrieved of the judgment and decree rendered by the lower Appellate Court whereby it set aside the judgment and decree dated 15.06.2009 passed by the trial Court whereby the suit of respondent-plaintiff seeking declaration qua setting aside of the judgment and decree dated 19.02.1994 passed in Civil Suit No.214 of 1994 titled "Raj Pal and another Vs. Chameli" as not binding on the rights of the plaintiff with consequential relief of possession as well as permanent injunction, had been decreed.

Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr. C.B. Goel, Ms. Neeti Gupta and Mr. Rajesh Bansal, Advocates submitted that the respondent-plaintiff chose to file the suit on 19.07.2007 on the ground that she was owner in possession of the suit land since she was married in village Tandwal which was far away from village Bhadson where the property is located, it was very difficult for her to cultivate and thus,

given the land on lease in favour of defendant Nos.1 and 2 and they had been paying the lease money. She could never think that the defendants could get the transfer of land in their favour and by obtaining the certified copies of jamabandi in September, 2006, she acquired the knowledge of judgment and decree dated 19.02.1994, thus, filed the aforementioned suit.

He submitted that the ingredients of fraud as envisaged under Order 6 Rule 4 CPC are not only conspicuously absent but even not proved. The respondent-plaintiff also alleged that there was no family settlement between her and defendant Nos.1 and 2. On the basis of decree even mutation No.1156 was entered. The ground for challenging the aforementioned decree had been that there was no family settlement/arrangement. She did not engage any counsel, sign the written statement or power of attorney to get her statement recorded in the Court, much less, never appeared in Court. Defendant Nos.1 and 2 played fraud having impersonating some other lady in order to cause wrongful loss. The respondent-plaintiff being an illiterate lady did not know how to put his signatures and she was only used to put her thumb impression and there was no occasion for her to transfer the land in favour of defendant Nos.1 and 2. The decree aforementioned required registration and was intentionally kept secret from the plaintiff. Since defendant No.1 was not having legal title, he could not have transferred the land in favour of defendant No.3 by dint of release deed bearing No.61/1 dated 28.04.2000. In fact, the respondent-plaintiff had failed to prove the physical possession of the property, much less, alleged lease, thus, foundation of the suit could not be established/laid. In fact, Assa Ram was the owner of the land. He was married to Parsani Devi. Prasani Devi, the grandmother of the appellants-defendants, was

recorded to be owner of land in question as per jamabandi for the year 1965-66 and the plaintiff along with her husband, Babu Ram, played a fraud upon Prasani Devi and fraudulently succeeded in getting judgment and decree dated 04.04.1972 passed in Civil Suit No.113/72 titled as “Smt. Chameli Vs. Smt. Parsani Devi”, in which the plaintiff was even impersonated and the respondent-plaintiff had not even put in appearance which had been proved through the testimony of witnesses, much less, the expert who had reiterated that she never appended her thumb impression in the earlier proceedings. In fact, as per the said decree, only symbolic joint possession was sought and the question of putting plaintiff in possession did not arise at all.

As per the pleading culled out in the aforementioned suit, it was alleged that out of love and affection towards Chameli, Prasani Devi in the year 1954 had orally gifted 2/3rd portion of the land which was otherwise illegal and impermissible and hit by Section 17 of the Indian Registration Act. The alleged gift of land in question till the passing of the impugned judgment and decree dated 4.4.1972 was never reflected in the revenue record as a matter of fact and the land in question remained under possession of the father of defendant Nos.1 and 2, being sons of Parsani Devi and Assa Ram. The plaintiff is none else but a paternal aunt (*bua*) of the defendants as they are her brother's children. In fact, Parsani Devi had never suffered any decree on 4.4.1972 as she was impersonated by Chameli and her husband. On account of aforementioned reasons, there used to remain dispute and differences between defendant Nos.1 and 2 and their father and the plaintiff and in the year 1993, a family panchayat consisting of close relations, *biradari* members and other respectables of the village was convened and a settlement arrived at wherein the plaintiff had

relinquished her claim over the land as mentioned in para 2 of the plaint in favour of defendant Nos.1 and 2 in equal shares but thereafter, prolonged the matter on one pretext or the other which ultimately forced the defendants No.1 and 2 to institute Civil Suit No.214 of 1994, resulting into judgment and decree dated 19.02.1994. Entering the sanction of mutation, much less, possession was/is in the knowledge of Chameli and she never bothered to challenge the same for almost 13 years and chose to file the suit in the year 2007. In fact, the suit is barred by limitation. It was a case of consent decree and as per provisions of Order 23 Rules 3 and 3A CPC, appeal against consent decree is not maintainable in view of the ratio decidendi culled out in the judgment of Hon'ble Supreme Court in **Daljit Kaur and another Vs. Muktar Steels Pvt. Ltd. and another 2014(1) RCR (Civil) 625** and on similar proposition of law, various other judgments were also cited i.e. judgment of this Court in **Dilbagh Singh Vs. Umed Singh and others 2013(3) CivCC 470; Ram Singh and another Vs. Hardip Singh and others 2010(1) RCR (Civil) 476** and judgment of Hon'ble Supreme Court **Shyam Lal @ Kuldeep Vs. Sanjeev Kumar 2010(8) RCR (Civil) 2798** to contend that the suit for declaration to challenge the consent decree has to be filed within 3 years. Although there is no limit for filing suit on the basis of title but party cannot be permitted to circumvent the law by alleging the suit to be within limitation, particularly, when evidence has been led that she had the knowledge.

He further submitted that ratio decidendi culled out by the Division Bench of this Court in **Ibrahim @ Dharam Vir Vs. Smt. Sharijan @ Shanti 1979 PLJ 469** would not apply in this case as it is a case where despite mutation in favour of adverse party, the party remained in

possession and only when possession sought to be disturbed, it has been held that limitation starts reckoning from said date, however, in the instant case, the respondent-plaintiff has not been able to prove her possession. She was out of possession throughout and therefore, the suit was liable to be dismissed on the ground of limitation. The lower Appellate Court has misread and misconstrued the oral as well as documentary evidence by holding that the defendants have not at any point of time challenged the decree passed on 04.04.1972. In fact, there was no need once the respondent-plaintiff had suffered a decree on 19.02.1994 in favour of defendant Nos.1 and 2. The lower Appellate Court has also non-suited the appellants-defendants on the ground that none of the pleadings i.e. either in the written statement or anywhere else, the appellants have pleaded the family settlement. In this regard, the counsel for the appellants drawn attention of this Court to paragraph 2 of the written statement on merits in the record of trial court wherein there is a categorical pleading with regard to the convening of the family panchayat and family settlement, thus, there is misreading of pleadings and therefore, illegality and perversity. He also drawn attention of this Court to statement of DW3, Jiwa Ram, to contend that though the trial Court has dismissed the suit, the lower Appellate Court while decreeing the same, has erroneously held that Jiwa Singh deposed in cross-examination that he and Lala Ram were not present in the panchayat wherein on going through the statement, he has specifically stated that it is Jagir Singh and Lala Ram who were not present, thus, there is misconstrual and misreading of the oral evidence which is sufficient ground to hold the judgment and decree passed by the lower Appellate Court to be illegal and perverse. Ashok Kapoor, Advocate, Karnal was examined as DW6 who

deposed that Chameli Devi put her signatures on the aforementioned power of attorney, Ex.P1.

He further submitted that respondent-plaintiff has failed to prove the ingredients of Order 6 Rule 4 CPC. Once it has been established through the testimony of expert i.e. DW-5, Ram Dhan Babbar that specimen thumb impressions taken from the record of Civil Suit No.113 of 1972 decided on 4.4.1972 were compared with the thumb impression put in the present suit which is itself a clincher that Chameli Devi had never appeared in the decree obtained on 04.04.1972. He also drawn attention of this Court to the statement of Chameli Devi, who appeared as PW1 where in the cross-examination, she had categorically admitted that she had never filed any suit against her mother Parsani Devi. In case, she was so vigilant in allegedly establishing her right and claim in the suit property by filing suit after 13 years, she should have been aware of the previous decree, if at all, the suit was filed and she had put in appearance. He also referred to statement of PW2, Surta Ram to contend that ex facie the suit is barred by limitation as respondent-plaintiff's witness stated that he was neighbour of the defendants and his land was adjoining to them and he had never found Chameli or her husband to be in possession of the property, much less, ever cultivated the land. In support of his contention, the learned Senior Counsel for the appellants relied upon judgments of this Court in *Harpal and others Vs. Ram Piari and others* 1981 PLJ 492; *Gurdev Kaur and another Vs. Mehar Singh and others* 1989 PLJ 182; *Murti Vs. Jai Ram and others* 2012(5) RCR (Civil) 574; *Lichhami Devi and others Vs. Bharpal and others* 2012(5) RCR (Civil) 628; *Rajjo Vs. Jawahar Singh* 2007(2) RCR (Civil) 62 and *Dhan Raj and another Vs. Sat Pal and another* 2008(4)

CivCC 369.

He further submitted that plaintiff can only challenge the consent decree on the basis of fraud but not on account of non-registration. In support of his contention, he relied upon judgment of Supreme Court in Som Dev and others Vs. Rati Ram and another 2006(4) RCR (Civil) 303 and various judgments of this Court in Charanjit Singh Vs. Jagtar Kaur (dead) through Lrs 2016(2) PLR 480; Murti Vs. Jai Ram and others 2012 (5) RCR (Civil) 574; Shanti Devi Vs. Mange Ram 2011(1) PLR 680 and Pritam Singh and others Vs. Bohti 2014(4) RCR (Civil) 382, thus, urges this Court for setting aside the judgment and decree rendered by the lower Appellate Court dismissing the suit by formulating the substantial questions of law as drawn in the memorandum of appeal, in essence, allowing the appeal by restoring the judgment and decree rendered by the trial Court.

No doubt, this Court on earlier occasions had been framing the substantial questions of law while deciding the appeal but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213 wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, whether provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure. The Constitutional Bench of Hon'ble Supreme Court held that the decision in Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262 on applicability of Section 97(1) of CPC was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intend to frame the

substantial questions of law while deciding the appeals aforementioned.

Per contra, Mr. Arun Jain, learned Senior Counsel assisted by Mr. Kushagra Mahajan, Advocate submitted that Parsani Devi in the decree dated 04.04.1972 had not given the entire property but a part of the property. As per the stand taken in the written statement, appellants have admitted Chameli Devi to be owner in pursuance of the judgment and decree and in the absence of challenge to the judgment and decree passed on 04.04.1972, much less, not setting up any counter claim, rightly so, the lower Appellate Court has decreed the suit. In fact, Chameli Devi had never gone to school and only used to put thumb impression. There is no evidence that she had been either thumb marking or appending his signatures on the documents. He had referred to the cross-examination of DW2, Tej Pal wherein he had admitted that he did not have any record showing signatures of Chameli Devi, much less, cannot produce any document. Even PW2, Surta Singh, had also stated in examination-in-chief that Chameli Devi was/is illiterate. He also drawn the attention of this Court to cross-examination of PW3, Jagir Singh in this regard. There were stark contradiction with regard to presence of the panchayat members at the time of family settlement. By referring to the cross-examination of Tej Pal, DW2, on similar lines, he has drawn attention of this Court to cross-examination of DW4, Jile Singh, who specifically feigned ignorance that he did not know whether Chameli Devi was illiterate or not. As regards the testimony of DW-6, Ashok Kapoor, Advocate, who allegedly appeared for Chameli Devi in the suit resulting into judgment and decree dated 19.02.1994 was put to a specific question about personal knowledge with regard to Chameli Devi and he feigned ignorance. He could not answer

whether she was illiterate or used to append her signatures.

He further submitted that the decree aforementioned required registration. Chameli Devi had her own four daughters and they were the last heirs and therefore, she could not have suffered a decree dated 19.02.1994 in favour of sons of her brothers. He also drawn attention of this Court to panchayati register where Chameli Devi had thumb mark dated 13.01.992. In support of his contention, he relied upon ratio decidendi culled out from the judgment of Hon'ble Supreme Court in *Smt. Badami (D) through her LR Vs. Bhali 2013(1) RCR (Civil) 821* where identical question of alleged consent decree an outcome of fraud and misrepresentation came to be pondered upon and it was held that fake suit had been filed and written statement was filed thereafter and same day judgment had been rendered. By referring to provisions of Order 10 Rule 1, Order 14 Rule 1 and Order 15 Rule 1 of Code of Civil Procedure, the Hon'ble Supreme Court found that the Courts below overlooked the aforementioned provisions which provide that there was no occasion arose for the first hearing of the case. It only comes after framing of issues. In fact, he submitted that the cumulative effect of the aforementioned provisions of the Civil Procedure Code is that the first hearing of the suit can never be earlier than the date fixed for the preliminary examination of the parties and the settlement of issues. He also submitted that Order 4 Rule 1 CPC provides for suit to be commenced by plaint and when the suit has been duly instituted, a summon may be issued to defendant to appear and answer the claim on a day to be therein specified. No doubt, there is provisions under Order 5 Rule 1 CPC that no summons are required to be issued where the defendant appears and admits the claim of the plaintiff.

He relied upon judgment of Hon'ble Supreme Court in *Santosh Vs. Jagat Ram and another 2010(2) RCR (Civil) 207* and *Kanwar Singh Saini Vs. High Court of Delhi 2011(4) RCR (Civil) 402* on similar lines, thus, urges this Court for upholding the judgment and decree passed by the lower Appellate Court by dismissing the appeal.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is force and merit in the submissions of Mr. Aggarwal, learned Senior Counsel appearing for the appellants on account of following reasons:-

(i) The lower Appellate Court has remained oblivious of the factum that the suit, *ex facie*, is barred by limitation as the judgment and decree challenged in the suit is dated 19.02.1994 and the suit had been filed in the year 2007. A bald averment in one of the paragraphs of the plaint that the respondent-plaintiff acquired the knowledge of the judgment and decree and mutation entered subsequent thereto only in September 2006 and filed the suit immediately thereafter, is neither here nor there.

(ii) The fact remains that the respondent-plaintiff had failed to prove her physical/conscious possession over the suit property i.e. pleadings qua leasing out the same to defendant Nos.1 and 2. Her own witness, PW2 Surta Singh admitted that he had never seen the plaintiff or her husband Babu Ram ever cultivating the land. The ratio decidendi culled out by judgment of Division Bench of this Court in *Ibrahim's case* (supra) had an occasion to ponder upon the provisions of Article 58 of the

Limitation Act by holding that the reckoning date of limitation in such cases would not be from the date of mutation but when the enjoyment on the title or possession has been disturbed. None of the ingredients have been proved in order to bring the suit within limitation. The aforementioned observation of mine have to be read in conjunction with provisions of Order 23 Rules 3 and 3A CPC which reads thus:-

“Rule 3. Compromise of suit.- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit:

Provided that the hearing of a suit shall proceed and no adjournment shall be granted in it for the purpose of deciding whether there has been any adjustment or satisfaction unless the Court for reasons to be recorded in writing thinks fit to grant such adjournment, and provided further that the judgment in the suit shall not be announced until the question of adjustment or satisfaction has been decided.

Provided further that when an application is made by all the parties to the suit either in writing or in open Court through their counsel that they wish to compromise the suit, the Court may fix a date on which the parties or their counsel should appear and the compromise be recorded but shall proceed to hear those witnesses in the suit who are already in attendance, unless for any other reason to be recorded in writing, it considers it impossible or undesirable to do so. If upon the date fixed no compromise has been recorded, no further adjournment shall be granted for this purpose, unless the Court, for reasons to be recorded in writing considers it highly probable that the suit will be compromised on or before the date to which the Court proposes to adjourn the hearing.”

Explanation: An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within the meaning of this rule.

3A. Bar to suit. *No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”*

The Hon'ble Supreme Court had an occasion to ponder upon equation i.e. regarding similarity between consent decree and decree obtained by compromise and held that no independent suit or appeal against the consent decree would lie and remedy, if any, is to approach the very same Court, thus, in my view, the suit, ex facie, was not maintainable.

(iii) The arguments of Mr. Jain, learned Senior Counsel by referring to the judgments supra, at the first instance, look attractive, but on going through the ratio decidendi culled out from the aforementioned judgments which hold that first hearing of the case would be only when the issues are framed and reading the provisions of Order 10 Rule 1, Order 14 Rule 1 and Order 15 Rule 1 CPC, with all humility, I cannot oblivious of Order 12 Rule 6 CPC, which reads thus:-

“6. Judgment on admissions. *Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.*

(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

The aforementioned provisions provide that framing of issues would only arise when the parties are at variance. If the claim under the plaint is admitted, there is no need for framing issues, therefore, question of first date of hearing of the case would not arise. The statute envisages the passing of the judgment on the

basis of admission which is not held to be so ultra vires and therefore, ratio decidendi culled out in the judgments referred to above would not apply to the facts and circumstances of the present case.

(iv) In my view, the respondent-plaintiff has failed to prove the ingredients of fraud and misrepresentation as per the provisions of Order 6 Rule 4 CPC. DW-6, Ashok Kapoor, Advocate, who appeared on behalf of Chameli Devi and filed vakalatnama, was extensively cross-examined but nothing contrary surfaced. On the other hand from the report of Ram Dhan Babbar-DW5, finger print and hand writing expert, it is clearly revealed that thumb impression was not of Chameli Devi and therefore, it cannot be concluded that she had been in habit of putting thumb impression or signatures. During my stay at bar over a period of 28 years, I have come across many litigants who were illiterate but knew how to append the signatures either in vernacular i.e Hindi, Punjabi, Urdu or in English.

(v) It was categorically pleaded in the plaint that plaintiff is/was reserving the right to lodge the criminal proceedings. No sane person, who has actually been impersonated, would sit idle and remain insouciant by not lodging the criminal proceedings. Till date no such action has been taken. There was no need for the defendants to set up the counter claim or challenge the judgment and decree of the year 1972 once the respondent-plaintiff had no saleable right and interest after the decree of the year 1994. Even the 1972 decree on the basis of the oral gift

had not seen the light of the day as it was never reflected in the revenue record nor it was set up in defence in the civil suit No.264 of 1994. Plaintiff is none else but the “bua” of defendant Nos.1 and 2, sons of Assa Ram and Parsani Devi.

(vi) The lower Appellate Court has misconstrued the testimony of DW-3, Jiwa Singh to form an opinion that he stated that he and Lala Ram were not present whereas Jagir Singh and Lal Ram were not present. Even *panchayati nama* of the family settlement had been proved on record. This Court has come across many cases where persons having suffered a decree, approached the Court after a lapse of considerable time, probably on the premise that by the passing of time, the rates of the property would increase day by day. The aforementioned act is none else but act of greed/aggrandizement.

The lower Appellate Court has not taken into consideration all these factors in not concurring with the judgment and decree rendered by the trial Court and dismissing the suit. The proceedings of the Court are sacrosanct until proved contrary in evidence in this regard. The respondent-plaintiff has failed to lead evidence to the contrary.

For the foregoing reasons, I am of the view that the judgment and decree rendered by the lower Appellate Court is not sustainable in the eyes of law and hereby set aside. The second appeal is allowed, in essence, the suit of the respondent-plaintiff is dismissed.

(AMIT RAWAL)
JUDGE

September 22, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	Yes