

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

**Regular Second Appeal No.4622 of 2013 (O&M)
Date of Decision: July 15, 2016.**

Sanjay Sharma and another

.....APPELLANT(s).

VERSUS

Amar Nath (deceased) through his LRs and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ranjit Saini, Advocate
for the appellant (s).

Mr. Anil Kshetarpal, Senior Advocate with
Mr. Piyush Aggarwal, Advocate
for caveator-respondent Rakesh Kumar Sharma.

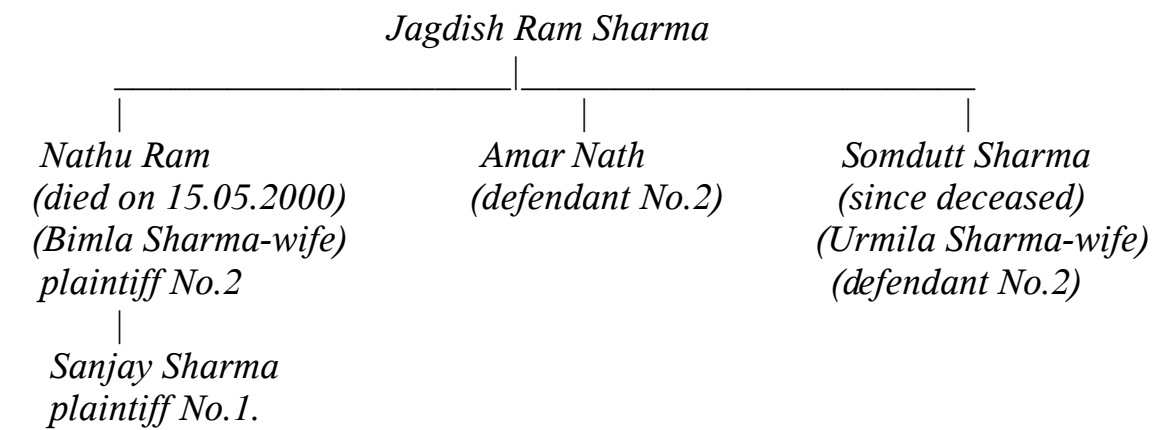
SURINDER GUPTA, J.

This is second appeal against the concurrent judgments of the Courts below dismissing the suit filed by appellants-plaintiffs for possession of the land measuring 4 kanals 13 marlas and other land situated in the revenue estate of village Sadhaura Nadipur, Hadbast No.155, Tehsil Jagadhari, District Yamuna Nagar, as per jamabandi for the year 2005-06 as fully described in the head note of the plaint, by setting aside the judgment and decree dated 13.12.1993 passed in civil suit No.824 dated 17.11.1993 titled as '*Amar Nath Vs. Nathu Ram and another*' passed by the Court of the then Sub Judge 1st Class, Jagadhari. As a consequential relief, mutation Nos. 2947 dated 27.01.1994 and 6902 dated 25.01.1994 sanctioned on the basis of impugned decree and the sale deeds mentioned at serial Nos.(i) to (xi) in the head note of the plaint executed by defendant No.1 in favour of

different persons, were also challenged. They also claimed relief of

permanent injunction restraining the defendants from further alienating the suit land and for recovery of mesne profits @ ₹20,000/- per acre till the delivery of possession.

Following pedigree table will help in understanding relation between the parties:-



Plaintiffs alleged that Nathu Ram had been residing and doing business with plaintiff in Banaras for the last 50 years. Defendant No.1 was in service, posted in Bihar and Somdutt Sharma and his legal heirs were/are residing in Gujarat and Rajasthan. Nathu Ram had executed a Will dated 29.09.1998 in favour of his wife Bimla Sharma. The parties never resided at village Sadhaura, District Yamuna Nagar. In April/May, 2003, plaintiff No.2 came to village Sadhaura from Banaras for getting the land of her husband transfer in her name on the basis of Will dated 29.09.1998 and came to know about decree dated 13.12.1993 obtained by defendant No.1 by playing fraud, misrepresentation and impersonation. It also came to her knowledge that defendant No.1 had sold away the land owned by Nathu Ram to various persons i.e. defendants No.3 to 18 vide sale deeds mentioned at serial Nos.(i) to (xi) in the head note of the plaint. The plaintiffs challenged the impugned decree alleging the same as illegal, null and void and not binding on their rights. It was alleged that defendants

No.1 and 2 were not the family members of Nathu Ram as they were residing at Bihar, Gujarat and Rajasthan, as such, there could not be any family settlement. There existed no joint Hindu family of Nathu Ram with defendants No.1 and 2. Nathu Ram was never served in the suit filed by defendant No.1 and he never signed any paper or power of attorney in favour of Advocate who appeared to represent him in the civil suit. Nathu Ram neither filed any written statement, nor appeared before the Court at Jagadhari to make any statement. An alternate plea was taken that suit land in the hands of Nathu Ram was ancestral property and he was *Karta*/head of the family of which defendants No.1 and 2 were not the members, as such, they had no pre-existing right in the land owned by Nathu Ram who was not competent to alienate his share in favour of defendants No.1 and 2. The impugned decree being against the provisions of Hindu Succession Act and unregistered, carry no legal force.

Defendants No.1 and 2 contested the claim of plaintiffs in separate written statements, inter-alia pleading that under a family settlement, Nathu Ram and defendant No.2 agreed to transfer their shares in the suit land, which was a joint Hindu family coparcenary property, in favour of defendant No.1. Before entering into a settlement, value of suit land was got assessed and it was agreed by the parties that either of them can take the suit land and pay ₹70,000/- as share of other parties and Smt. Narati Devi, mother of Nathu Ram, Amar Nath (defendant No.1) and Somdutt Sharma. Under the family arrangement, defendant No.1 paid ₹70,000/- each to Nathu Ram, defendant No.2 and Smt. Narati Devi, against receipts. Consequently, civil suit was filed in which Nathu Ram and

defendant No.2 put in appearance, filed written statement, admitting the

claim of defendant No.1 and a decree was passed in his favour, which is a legal and valid decree. After the passing of the decree, Nathu Ram never challenged the same on the ground of fraud till his death and the plaintiffs now have got no right, title or interest to file the present suit, challenging the decree dated 13.12.1993. They were in the knowledge of the decree and did not question the same during the life time of Nathu Ram.

Remaining defendants also contested the claim of plaintiffs in their separate written statements, which are not being discussed in detail as their right title and interest will dependent on the right, title and interest of defendant No.1 which he acquired vide decree dated 13.12.1993.

I have heard learned counsel for the parties and have perused the paper book and record of the Courts below with their assistance.

Learned counsel for the appellants has argued that the suit property was joint Hindu family coparcenary property and Nathu Ram being *Karta* of joint Hindu family, was not competent to alienate the same. He was living in Banaras and never visited village Sadhaura. By examining hand-writing expert, appellants-plaintiffs have proved that the signatures of Nathu Ram on the receipt of payment of ₹70,000/-, on the written statement and power of attorney were not appended by father of plaintiff No.1, rather it was result of impersonation.

Admittedly, Nathu Ram, Amar Nath and Somdutt Sharma were owners of the suit property. Amar Nath had shifted to Banaras, where he called his brother Somdutt and later on Nathu Ram also went to Banaras and all the three brothers lived in a common rented house bearing No.D-37/77 situated at Bera Dev locality, Banaras. It was at later stage, Somdutt

Sharma died in 1986 and his wife Urmila Sharma got job in his place on ex

gratia basis in Indian Railway and shifted to Jodhpur and Amar Nath shifted to Siliguri on promotion. Defendant No.2 Urmila Sharma, who also suffered impugned decree, has admitted that this decree was suffered by her as well as Nathu Ram. The plaintiffs have no dispute or enmity with Urmila Sharma, as such, there is no reason for discarding her pleadings and statement.

Learned Civil Judge (Senior Division), Yamuna Nagar held as proved the payment of ₹70,000/- to Nathu Ram vide receipts Ex.D3 and D4 towards his share in the joint property in village Sadhaura, which was transferred to Amar Nath. Urmila Sharma also admitted the receipt of ₹70,000/- towards her share in the joint property and transfer of property in favour of Amar Nath. Shri S.D. Kishore, Advocate, who appeared as DW6, proved the admitted written statement filed by Nathu Ram and Urmila Sharma. Though the hand-writing experts examined by both the parties have given different opinion about the signatures of Nathu Ram as per the version of their parties, learned Civil Judge found weight in testimony of Urmila Sharma, Amar Nath Sharma, Ramdhan Babbar Hand-writing Expert and Mr. S.D. Kishore, Advocate to believe the version put forth by defendants No.1 and 2. Even otherwise, it is not understandable as to why defendant No.2 will support the claim of defendant No.1, when she will be a looser of 1/3rd share in the suit property by denying the claim of plaintiff and admitting the claim of defendant No.1. After analysing the evidence on record, learned Civil Judge observed in para 38 as follows:-

“38. The decree in question has been suffered not only by Nathu Ram but by DW1 Urmila Devi jointly in favour of Amar Nath and Urmila has fully supported the case of Amar Nath which further find corroboration from the testimony of

Amar Nath. Since both hand writing experts have given their reports in favour of their pay masters, in these situations, court itself can make an opinion with regard to genuineness of the disputed signatures in support of the evidence led by the parties. The evidence led by the plaintiffs is not sufficient in support of the handwriting report of Mani Jain, whereas the oral testimony of defendants is fully support(sic supporting) the hand writing report Ex.DW20/A of Ram Dhan Babbar. Thus, it is held that judgment and decree Ex.PW1/A and Ex.PW1/B has been passed by Nathu Ram and Urmila with their free consent in favour of Amar Nath and no such fraud has been played upon Nathu Ram. There is no evidence of plaintiff, how and in what manner, the alleged fraud has been played with Nathu Ram. Plaintiffs have failed to disbelieve the overwhelming evidence of defendants in support of their case. Moreover, if any fraud had been played with Nathu Ram, then this plea could have been taken by Nathu Ram himself and not by his legal heirs. Nathu Ram lived about eight years after passing of the decree. If any fraud had been played upon him, he must have challenged the decree. There is ample evidence on record which shows that the present plaintiffs had the knowledge of passing of the decree by Nathu Ram in favour of Amar Nath but they never challenged during the life time of Nathu Ram because they knew the reality. Had they challenged the decree in question during the life time of Nathu Ram, then Nathu Ram (would) not have supported the same. The ruling relied upon by the learned counsel for the plaintiffs is based upon the plea of fraud and, thus, not applicable in this case. Though, there is no dispute that fraud vitiates the solemn acts but I have already held that the decree is not a result of fraud, rather it has been passed voluntarily on the basis of family settlement by Nathu Ram and Urmila Devi (DW1) in favour of Amar Nath.”

The plea raised by the appellants-plaintiffs that the impugned decree being of property worth more than ₹100/- required registration, was

rightly discarded by the Courts below with averments that there was pre-existing right of parties in the suit property and the judgment and decree was outcome of genuine family settlement amongst members of family, who were closely related. It is a case of appellants-plaintiffs that the suit property was ancestral property. Even otherwise, this property was jointly owned by three brothers, who had cordial relations. They sat down and settled the reasonable terms of family arrangement under which judgment and decree dated 13.12.1993 was passed. Nathu Ram remained alive for about seven/eight years after passing of the decree but never challenged the same on the ground of fraud. Even the plaintiffs remained silent for about three years after the death of Nathu Ram and Urmila Sharma, defendant No.2, who has nothing common in favour of defendant No.1 Amar Nath, is admitting the genuineness of judgment and decree. Besides Amar Nath, she was a party to the family settlement on the basis of which judgment and decree dated 13.12.1993 was passed. She is making the admission adverse to her interest and there was no reason for the Courts below to disbelieve her statement.

On perusal of the lower Court's record and judgments of the Courts below, I do not find that the conclusion drawn by the Courts below are based on misreading of evidence or wrong appreciation of evidence on record, calling for any interference.

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

Dismissed.

(SURINDER GUPTA)
JUDGE